



Supplementary Peer Review Report Combined: Phase 1 + Phase 2

JERSEY



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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 120 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Executive Summary

1. The international standard which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information partners. This is a supplementary report on the amendments made by Jersey to its legal and regulatory framework for transparency and exchange of information, as well as the practical implementation of that framework. It complements the Combined Phase 1 and 2 Review report which was adopted and published by the Global Forum on Transparency and Exchange of Information for Tax Purposes in January 2011 (the 2011 Report). As a result of this report, Jersey was rated overall as “Largely compliant” with the international standard and was recommended to take a number of actions to improve its legal and regulatory framework and its practice of exchange of information for tax purposes.

2. In May 2013, Jersey asked for a supplementary peer review report pursuant to paragraph 58 of the Global Forum’s Methodology for Peer Reviews and Non-member Reviews, based on progress with regard to the availability of accounting information, including underlying documents, for all relevant entities and arrangements for a minimum period of five years (element A.2), as well as with regard to the ability of the Jersey competent authority to access all relevant information for tax purposes (element B.1) and on the upgrade of an exchange of information instrument that did not meet the standard (element C.1). This supplementary report assesses the changes made by Jersey to address the recommendations made in the 2011 Report, and concludes that the legal and regulatory framework of Jersey is now fully “in place”.

3. The present report takes this opportunity to review other progress made to the legal and regulatory framework, in particular a number of new exchange of information instruments entered into by Jersey, and more generally the exchange of information practice of Jersey in the period 2010-12 (the

2011 Report reviewed the practice in the years 2007-09) and the implementation of a Phase 2 recommendation in the 2011 Report on the interpretation of EOI instruments.

4. With regard to the availability of information, the 2011 Report found that ownership and banking information were available in Jersey both in law and practice. This remains the case in 2013 and elements A.1 and A.3 remain determined as “in place” and “Compliant”.

5. The 2011 Report noted two gaps with regard to the availability of accounting information, in particular the absence of a consistent obligation in Jersey legislation to maintain accounting records including underlying documents for relevant entities and arrangements in all instances, and the absence of an express obligation for some types of partnerships and trusts to maintain their accounting records for a minimum of five years. Jersey has amended its legal framework recently. Pursuant to the Taxation (Accounting Records) (Jersey) Regulations 2013, domestic laws now consistently require the retention of reliable accounting information that includes underlying documents for a minimum of five years for all relevant entities and arrangements. This allows both A.2 recommendations from the 2011 Report to be removed and the determination to be upgraded to “the element is in place” and the rating to “Compliant”.

6. With regard to access to information, the 2011 Report reported a number of provisions in the three sets of regulations governing access powers (in relation with TIEAs, DTAs and with the United States) that could restrict the Comptroller’s power to access information for exchange purposes. On this basis, a recommendation was issued under element B.1. To address this issue, Jersey adopted the Taxation (Miscellaneous Provisions) (Jersey) Regulations 2012 that amended the regulations on access powers and addressed the impediments noted in the 2011 Report. The recommendation is therefore removed.

7. However, practice in 2010-12 showed that some wording in the provisions on access powers of the competent authority opened the door to many challenges and objections against the competent authority notices, including on whether subjective conditions were met, notably on what is considered “reasonable measures”. To address these issues, the Jersey authorities recently enacted the Taxation (Exchange of Information with Third Countries) (Amendment No. 7) (Jersey) Regulations 2013 and the Taxation (Miscellaneous provisions)(Jersey) Regulations 2014.

8. In addition to difficulties deriving from the drafting of the EOI Regulations, it appears that some features of the process put in place to gather information led to delays and sometimes unsuccessful exchange. As most amendments and corrective actions have taken place at the very end of the

period under review or afterwards, it is not possible at this stage to assess their impact in practice and whether the effectiveness of the gathering and exchange of information has significantly improved with these amendments. As a result, elements B.1 and B.2 are determined to be “in place” and rated as “Largely compliant”.

9. With regard to exchanging information, Jersey currently has exchange of information relationships with 80 jurisdictions, with a large increase due to the recent territorial extension by the United Kingdom of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters to Jersey. Of these 80 EOI relationships, 35 are in force, and 60 will be in force once the Multilateral Convention will have entered into force in Jersey on 1 June 2014. Since the 2011 Report, Jersey signed 18 new TIEAs and 7 new DTAs, including a DTA with Guernsey that meets the standard and triggers the removal of the recommendation made in the 2011 report to upgrade the EOI provision of the treaty with this partner. As a result, element C.1 is upgraded to “in place”.

10. The 2011 Report noted that a difference of views emerged in practice between Jersey and an EOI partner as regard the point of a criminal investigation at which information can be requested in relation to a criminal tax matter. This issue was solved since then. Accordingly, the recommendation under element C.1 is removed.

11. In the years 2010-12, Jersey received 133 requests for information from 16 partners, which represents a 370% increase compared with the previous three years. With this significant increase, the new concerns that were noted regarding the access powers of the competent authority had a direct impact on exchange of information in terms of the large amount of clarification requested by Jersey for the purpose of avoiding challenges on the notices issued to gather information, and of the protection of the confidentiality of the information received from treaty partners. Jersey also demonstrated an enhanced relationship with its EOI partners, who generally report good working relationships with the Jersey competent authority and emphasise its willingness to assist. The Jersey authorities have also taken actions to reinforce the co-operation and relationship with a couple of peers, when difficulties have occurred. Elements C.1 and C.3 are therefore rated as “Largely compliant”, and element C5 as “Compliant”. The Jersey authorities have already taken some regulatory and practical corrective actions and the Jersey authorities are encouraged to continue their efforts in this regard.

12. As a result of this supplementary assessment, Jersey’s rating for each of the 10 essential elements and its overall rating have been revised. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Jersey’s legal and regulatory framework and the

effectiveness of its exchange of information in practice. On this basis, Jersey has been assigned the following ratings: Compliant for elements A.1, A.2, A.3, C.2, C.4 and C.5, and Largely Compliant for elements B.1, B.2, C.1 and C.3. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Jersey is Largely compliant.

13. A follow up report on the steps undertaken by Jersey to answer the recommendations made in this report should be provided to the PRG within twelve months after the adoption of this report.

Introduction

Information and methodology used for the supplementary review of Jersey

14. The assessment of Jersey’s legal and regulatory framework made through this supplementary peer review report was prepared pursuant to paragraph 58 of the Global Forum’s Methodology for Peer Reviews and Non-member Reviews, and considers recent changes to the legal and regulatory framework of Jersey, as well as to the effectiveness of this framework in practice, based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference. Jersey informed the Peer Review Group (a subsidiary body of the Global Forum) in May 2013 of its significant progress made with regard to the availability of accounting information (element A.2), as well as powers to access information (element B.1) and exchange of information instruments (element C.1). These new legislative measures and other information provided by Jersey appeared likely to lead to an upgrade of the determination to “the element is in place”, and triggered the present assessment.

15. The present report takes the opportunity to review the implementation of other recommendations as well, even though the progress made may not have been sufficient to form the basis for a supplementary report on their own. Similarly, this report also reviews subsequent changes made to Jersey’s legal and regulatory framework and relevant changes in the practical implementation of Jersey’s legal and regulatory framework since the 2011 report.

16. The supplementary report was based on information available to the assessment team including the laws, regulations, and exchange of information arrangements in force or effect as at 26 May 2014, and information supplied by Jersey and partner jurisdictions. It follows the Combined Phase 1 and 2 Report of Jersey which was adopted and published by the Global Forum in January 2011.

17. The assessment was conducted by an assessment team, which consisted of two expert assessors and a representative of the Global Forum

Secretariat: Ms Shakira Dill, Senior Crown Counsel, Attorney General’s Chambers, Bermuda; Ms Merete Helle Hansen, senior advisor in the Ministry of Taxation of Denmark; and Ms Gwenaëlle Le Coustumer from the Global Forum Secretariat.

18. The Terms of Reference breaks down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchanging information. This review assesses Jersey’s legal and regulatory framework and the implementation and effectiveness of this framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. In addition, to reflect the Phase 2 component of the review, recommendations are made concerning Jersey’s practical application of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Jersey’s overall level of compliance with the standards.

19. An updated summary of determinations and factors underlying recommendations in respect of the 10 essential elements of the Terms of Reference, which takes into account the conclusions of this supplementary report, can be found at the end of this report.

Overview of Jersey

20. Jersey is a small island located in the English Channel, about 20 kilometres from the coast of France, and 130 kilometres from England. Its population is about 100 000.

21. Constitutionally, Jersey is a self-governing dependency of the British Crown. Jersey is not part of the UK and has an international identity separate from that of the United Kingdom (UK). It has its own directly elected legislative assembly, administrative, fiscal and legal systems and its own court of law. The UK is constitutionally responsible for the defence of Jersey and international representation. Although diplomatic representation is reserved to the Crown, Jersey has been developing its own international identity over recent years. In certain circumstances Jersey may be authorised to conclude its own international agreements by a process of entrustment. For example, Jersey has autonomy in all domestic matters, including taxation. Having made commitments on the exchange of tax information, Jersey has consequently negotiated TIEAs, DTAs and Intergovernmental Agreements with an

increasing number of jurisdictions. Recognising Jersey’s domestic autonomy in tax matters, the UK government has entrusted Jersey to conclude tax agreements within the terms of a Letter of Entrustment issued to its government, as evidenced in the preamble to all of Jersey’s TIEAs, which states: “Whereas it is acknowledged that the Government of Jersey has the right under the terms of its Entrustment from the UK to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of ...”. Jersey’s separate international identity is also reflected in the decision of the Island’s assembly in 2013 to create the position of Minister for External Affairs. Jersey has a distinct relationship with the European Union (EU) set out in a Protocol attached to the Treaty of Accession of the UK to the then European Community in 1973. In broad terms, Jersey is part of the customs territory of the European Community but not part of the EU and subject to the free movement of goods provisions but is otherwise considered by the EU as a third country. Jersey’s legal system is a combination of common law, statute and customary law.

22. Jersey is in monetary union with the UK. The Jersey notes are issued for local transaction purposes only. Every Jersey note can be exchanged for a sterling note to the same value issued by the UK, and the UK notes are legal tender in Jersey. All amounts referred to in this report are in British pound sterling unless otherwise indicated (as at 16 May 2014 GBP 1 equals EUR 1.2 and USD 1.7).

Financial sector driving the economy

23. Jersey’s financial services industry produces about half of Jersey’s total economic activity, with the predominant sectors being banking, trust companies and investment funds. Banking remains the most profitable sector, generating about 80% of the finance industry’s total profits, with a significant amount of banking business flowing from the investment fund and private trust sectors. In June 2013, 12 400 people were employed in the finance industry, at a stable level since the 2011 Report, and equating to about a quarter of Jersey’s workforce. Within this sector some disparities are noted, with a decrease in the banking sub-sector and a small increase in the accounting sub-sector.

24. At the end of 2013, 42 banks were operating in Jersey, 13 of which are Jersey incorporated subsidiaries of foreign banks and the rest are branches of foreign banks. The value of the assets under management in the Jersey Finance Industry remains stable. At 30 September 2013, the total value of banking deposits held in Jersey was GBP 145.2 billion. The total number of regulated funds was 1 348, with a net asset value of funds under administration of GBP 194.8 billion. The value of assets held by trusts is estimated to be in the region of GBP 500 billion (statistics are not collected for this sector due to the varied nature of those assets).

25. The predominant amount of international business remains conducted with UK-based intermediaries. This reflects a close and strong complementary relationship between the Island and the City of London whereby a good deal of business from the world at large comes to Jersey through the City law firms, etc. and in return the majority of the funds attracted to Jersey from all over the world are up-streamed by the Jersey based financial institutions to their parent or related offices in the City. An independent report by Capital Economics published in July 2013 showed that GBP 118 billion of UK banks' funding came from Jersey and GBP 0.5 trillion of foreign investment in the UK comes via Jersey. The growth in the financial business is now coming largely from the Middle East and the Far East regions. For instance, Jersey-administered trusts slightly shifted from UK clients seeking tax advantages to Middle East clients structuring inheritance plans.

26. The regulator of the financial services industry is the Jersey Financial Services Commission (JFSC), which employed 117 staff (full time equivalents) in 2013. It also oversees compliance with the anti-money laundering/counter financing of terrorism regime in place in Jersey.

27. As at 31 December 2012, the JFSC supervised 1 328 licensed entities, made up of 42 banks, 466 fund service businesses, 140 general insurance mediation businesses, 178 insurance companies, 97 investment businesses, 189 trusts and company businesses, and 216 designated non-financial businesses and professionals. Jersey also counted 92 accountants, 45 lawyers and 2 tax consultants registered with the JFSC in 2013. A continuous decrease in the total number of trust and company service providers is observed since the introduction of a more robust oversight regime in 2001 (when trust and company service providers were 230, including 4 individuals with a single class of registration (director) and 12 accountancy firms). The figure of 189 trusts and company businesses registered as at 31 December 2012 included 49 individuals with a single class of registration (director) and 10 accountancy firms, i.e. there were approximately 130 "traditional" trust companies registered. The figure of 130 has reduced further to approximately 120 as at 31 December 2013.

28. In addition to administering the relevant statutes (which includes conducting investigatory and supervisory functions) and implementing regulatory requirements (through Codes of Practice), the JFSC has also developed non-binding guidance texts to assist those working in the industry to meet their legal obligations and regulatory requirements on obtaining, updating and retaining relevant information and records concerning ownership, identity, accounting and bank information.

Taxation system

29. Jersey's present corporate tax regime was introduced in 2009, and is based on the zero/ten model. Its introduction was contemporaneous with the repeal of legislation providing for the establishment of international business companies and exempt companies. The zero/ten model provides for many non-financial services companies to qualify for a 0% corporate tax rate. A 10% corporate tax rate applies to financial services companies including banking, trust and fund administration sectors. A 20% standard rate applies to utilities companies, companies in receipt of Jersey rents and companies in receipt of Jersey property development profits. The standard rate of income tax for individuals is 20%, subject to various allowances, reliefs and exemptions.

30. Jersey introduced a system of Goods and Services Tax (GST) in 2008 at a rate of 3%, which was increased to 5% on 1 June 2011. The GST includes an international services exemption method which allows financial services companies to pay a flat fee in return for an opt-out from the GST regime. In addition to the Income Tax and GST, Jersey also applies a Land Transaction Tax. There is no tax on capital in Jersey.

31. Although it is outside of the EU single market, Jersey has agreed to support the EU savings directive by applying a retention tax (equivalent to the "withholding tax" applied by EU members Austria and Luxembourg) with provision for voluntary disclosure. Jersey has agreed to move to automatic exchange of information and drop the withholding or retention tax with full effect from 1 January 2015.

32. Taxes are administered in Jersey by the Taxes Office, staffed with 95 persons.

Exchange of information for tax purposes

33. The framework for the exchange of information for tax purposes is overseen by the office of Jersey's Comptroller of Taxes as the authorised representative of the Minister of Treasury and Resources, which is Jersey's competent authority for EOI purposes. The Comptroller of Taxes is responsible for all aspects of requests made under EOI arrangements, and works in conjunction with the Chief Minister's Department and the Law Officers' Department to develop and manage Jersey's network of EOI arrangements internationally, as well as to implement appropriate domestic legislation to support its international obligations.

34. Jersey's network for the exchange of information for tax purposes covers a total of 80 jurisdictions, and is based on bilateral agreements and most recently the Multilateral Convention on Mutual Administrative

Assistance in Tax Matters. Of these 80 EOI relationships, 35 are currently in force, and a total of 60 will be in force once the Multilateral Convention will have entered into force in Jersey on 1 June 2014. Some jurisdictions are linked to Jersey by more than one instrument. A complete list of the EOI partners of Jersey is set out in Annex 3, including the dates of signature and entry into force of the underlying EOI instruments.

35. Jersey's involvement in the exchange of information practice has evolved since the Combined review. While the competent authority had received 36 EOI requests from 7 partners in the years 2007-09, 133 requests were received from 16 partners in the years 2010-12 (45 requests in 2010, 36 in 2011 and 56 in 2012). The main EOI partners of Jersey are Sweden, France, the United Kingdom, Norway and the Netherlands. The increase is directly linked to the expanding EOI network of the jurisdiction. It is expected that the number of requests will grow again in the coming years with the entry into force in Jersey of the Multilateral Convention on 1 June 2014. On the mid-term, the workload is also expected to grow with the implementation of automatic exchange of information on a larger scale (Jersey already exchanges some information on the basis of the European Union Savings Directive). Jersey has signed an inter-governmental agreement (IGA) with the US and the UK and is included in a group of jurisdictions committing to the early implementation of the Common Reporting Standard on automatic exchange of information (AEOI) (as indicated in the statement issued on 19 March 2014).

36. Jersey's EOI instruments are incorporated into domestic law by the following pieces of legislation that have been amended in 2012, to address the recommendations in the 2011 Report and in 2013 and 2014 to address other shortcomings identified with the developing EOI practice of Jersey:

- Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008 as amended in 2012 and 2013;
- Taxation (Double Taxation)(Jersey) Regulations 2010 as amended in 2012 and 2014;
- Taxation (United States of America) (Jersey) Regulations 2006 as amended in 2012 and later repealed in 2014;
- Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014, which will enter into force on 1 June 2014.

37. The Tax Information Exchange Agreement (TIEA) with the United States was the first such Agreement entered into by Jersey, and initially it was thought that each Agreement would call for a specific set of Regulations. Subsequently, Jersey considered that it was more appropriate to have omnibus

Regulations relating to all third countries, with the individual jurisdictions referred to in a Schedule to the Regulations. As the USA Regulations were in existence their separateness was retained, but with the need to make a significant change to those Regulations in 2014 to bring them into line with the omnibus Regulations, Jersey considered that it was more appropriate to revoke the USA Regulations and include the United States of America in the Schedule to the 2008 Regulations. The USA Regulations were in force during the period under review.

38. A new piece of regulations has recently been adopted to implement the Multilateral Convention into Jersey's domestic legal and regulatory framework – it basically indicates that the TIEA Regulations will apply to EOI requests received on the basis of the Multilateral Convention.

Compliance with the Standards

A. Availability of Information

Overview

39. Effective exchange of information requires the availability of reliable information. This part of the report considers the legal and regulatory framework in place in Jersey as of May 2014 with regard to the availability of ownership information, accounting records and banking information. It also assesses the implementation and effectiveness of this framework in practice. It follows the combined Phase 1 and 2 report of Jersey which was adopted and published by the Global Forum in January 2011 (the 2011 Report). The 2011 Report found that elements A.1 (availability of ownership information) and A.3 (availability of banking information) were “in place” and no recommendations were made; these two elements are rated as “Compliant”.

40. The 2011 Report found that element A.2 (availability of accounting information) was “in place, but certain aspects of the legal implementation of the element need improvement”, and has been rated as “Partially compliant”. Two Phase 1 recommendations were made under element A.2 as the 2011 Report found that: (i) obligations to maintain reliable accounting records, including underlying documents in line with the Terms of Reference were not consistently in place for relevant entities and arrangements in all instances; and (ii) there was no express obligation in respect of all partnerships, trusts and foundations to maintain reliable accounting records for a 5 year minimum period.

41. Since the 2011 Report, Jersey introduced the Taxation (Accounting Records) (Jersey) Regulations 2013 (the “Accounting Regulations”) to address these recommendations. Under the Accounting Regulations, every legal or natural person that is in receipt or possession of any income or of any profits arising from the carrying on of a business or letting of a property is required to make and keep adequate accounting records in line with the international standard. The accounting records must be supported by relevant underlying documentation, such as invoices, receipts, certificates and vouchers, and all records must be maintained for a minimum period of six years. These obligations apply regardless of whether the person is required to file a Jersey tax return. Accordingly, both A.2 recommendations from the 2011 Report have been addressed and are removed. The determination is therefore upgraded to “in place” and the rating is upgraded to “Compliant”.

42. Jersey’s exchange of information partners requested almost the same numbers of ownership and accounting information during the three years under review (66 requests related to identity and ownership information, and 65 to accounting information – a request may contain several questions). Most ownership and accounting information requested related to companies, but also trusts, individuals and a few partnerships. Banking information was also frequently requested (in 107 requests), but mainly concerning individuals, followed by companies, and also partnerships and trusts. A number of other questions related to other issues, such as tax information or KYC documentation.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR¹ A.1.1), Bearer Shares (ToR A.1.2), Partnerships (ToR A.1.3), Trusts (ToR A.1.4), and Foundations (ToR A.1.5)

43. The 2011 Report found that Jersey had a legal framework in place to ensure the availability of ownership and identity information for all relevant entities and arrangements.

44. In respect of ownership and identity information, the obligations imposed by Jersey in respect of companies, partnerships, trusts and foundations are generally sufficient to meet the international standard. Ownership and identity information requirements are imposed directly by legislation

1. Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.

governing the formation of these entities, as well as anti-money laundering (AML) obligations imposed on service providers, licensing requirements for regulated industries (such as mutual funds, insurance companies and investment businesses) and the obligations for persons subject to the Control of Borrowing (Jersey) Order.

45. The legal and regulatory framework of Jersey remained stable since the 2011 report, and only a few amendments are relevant for the review. The Taxation (Miscellaneous Provisions) (Jersey) Regulations 2012 (the “2012 Amendments”), entered into force on 9 October 2012, amended the regulations governing the access powers of the Jersey competent authority. In this framework, a couple of new provisions are introduced to take into account the evolving EOI environment and to reinforce the record keeping obligations in Jersey.

46. First, the 2012 amendments to the EOI Regulations introduced a new provision originally related to the United States Foreign Account Tax Compliance Act. Regulation 10C requires a taxpayer, and a third party who provides financial services to a taxpayer, to keep records related to the taxpayer’s liability to tax in a third country for at least 6 years. Non-compliance is an offence punishable with a fine up to GBP 5 000 (i.e. EUR 6 100).

47. Second, the 2012 Amendments introduce a new provision on the protection of evidence. Regulation 11 of the EOI Regulations provides that the persons concerned (taxpayers) or third parties (service providers) requested to provide information to the Jersey competent authority are prohibited to alter, conceal, destroy, or otherwise dispose of any tax information that is requested by the competent authority for Jersey. The obligation is lifted, in the case of informal requests, if the request is withdrawn or not followed with a formal notice within 12 months, and in the case of a formal notice, with the consent of the Jersey competent authority or the court. This provision applies notwithstanding other record keeping obligations and aims at preserving the integrity of documents when the statutory retention period may have elapsed already.

In practice

48. There are 34 200 entities registered in the Jersey Financial Services Commission (JFSC) Registrar in 2013, about half of which are wholly owned by non-residents. Most of the entities registered in Jersey are private companies (92%), followed by limited partnerships (3.5%). The rest is composed of 792 public companies, 10 limited liability partnerships and 33 separate limited partnerships, 216 foundations, 82 protected cell companies and 45 incorporated cell companies.

49. The Jersey authorities and representatives of the private sector consider that the new provisions on the retention of documents should not impact

the practice significantly as some other retention obligations already exist and in practice most service providers keep documents for ten years, i.e. the limitation period for contract claims.

50. Another trend noted by the private sector is the better understanding and acceptance of clients concerning the customer due diligence measures of service providers, including checks on the beneficial owners of the clients. A representative of the trust industry noted that checks on the beneficiaries are performed each time a distribution is made to them. Jersey trustees of foreign law trusts appear to be rare and in any event are subject to the same obligations as trustees of Jersey trusts. A number of foreign trustees are also known to administer Jersey trusts with no other links to Jersey than the use of the Jersey law. In these cases, there may be no information available in Jersey, and no information is available on their compliance with rules on the availability of ownership and identity information.

Enforcement provisions to ensure the availability of information (ToR A.I.6)

51. The 2011 Report found that penalties are generally available to enforce the obligations to maintain ownership and identity information of relevant entities and arrangements, with financial sanctions imposed by judicial proceedings rather than by application of administrative powers. In addition, the Jersey Financial Services Commission (JFSC) plays the main role in ensuring compliance with relevant obligations through a tight supervisory regime which includes large investigatory powers and the power to impose administrative sanctions such as private warnings, public statements, cancellation of licences or implementation of temporary managers to oversee remedial measures.

JFSC Registrar

52. The Registrar has not reported significant changes in either law or practice since the 2011 Report. At registration, Jersey-incorporated companies must disclose their ultimate beneficial ownership and the Registrar performs intelligence checks. These include checking the economical purpose and validity of the proposed entity, and the existence of criminal records of the proposed founders, controllers and beneficial owners in Jersey but also in the United Kingdom through co-operation with the UK authorities. In practice, the Registrar has noted on occasion that names of persons who in reality are acting on behalf of other members of their family had been provided, in which cases the applications have been rejected. Registered addresses that do not correspond to authorised business premises are also the subject of close scrutiny, knowing that “virtual” offices (i.e. offices existing

only on the web) are not permitted in Jersey. Registration can take in practice between a few days and several months in most complex cases.

53. All documents gathered by the Registrar are scanned and saved in digital form, which makes them easily retrievable. This facilitates co-operation with the Jersey competent authority when ownership information concerning the founders and original beneficial owners of Jersey entities is required.

54. Two new types of entities were introduced in Jersey in 2010 – separate limited liability partnerships and incorporated limited partnerships. These entities were fully described in the 2011 Report but the legislation was awaiting confirmation so enforcement of the laws was not possible at that time; the enabling laws were enacted later in 2011. In practice, the Registrar performs the same controls upon incorporation as for other entities and has not noted anything particular concerning these new types of partnerships.

55. The Registrar does not take enforcement actions, but informs the compliance department of the JFSC of concerns it may have on applicants.

56. The role of the Registrar is key at the time of registering a new entity. Information provided at that time is not necessarily updated afterwards, as this task pertains essentially to the entities themselves that must maintain up-to-date records and to service providers pursuant to their AML obligations.

JFSC licensing and money laundering supervision

57. The JFSC Enforcement Department has not reported significant changes in either regulations or practice since the 2011 Report.

58. As at 31 December 2012, the JFSC supervised 1 328 licensed entities, made up of 42 banks, 466 fund service businesses, 140 general insurance mediation businesses, 178 insurance companies, 97 investment businesses, 189 trusts and company businesses, and 216 designated non-financial businesses and professionals. In 2013, Jersey also counted 92 accountants, 45 lawyers and 2 tax consultants registered with the JFSC.

59. The JFSC has continued to exercise during the period 2010-12 a close supervision of trust and company service providers. It conducted 58 examinations in 2010, 47 in 2011 and 58 in 2012 and covered notably customer due diligence and customer profiling, with reviews, on a sample basis, of records and files held by the service providers. The intensity of an inspection may vary from two days to two weeks, and be performed by a team between two to six staff members. Some deficiencies identified during these examinations relate to risk awareness and insufficient rigour in respect of challenging the purpose and rationale behind structures and/or transactions.

60. In total, the JFSC Enforcement Department investigated 80 cases in 2010 and around 100 in 2011 and 2012 that resulted in some public statements on its website² and the closure of a regulated service provider. These figures include a few failures to maintain ownership or accounting information.

61. The JFSC also monitors international developments on the fight against tax evasion and aggressive tax avoidance, and the government asked the JFSC to include aggressive tax planning in the list of sensitive activities. As a result, the JFSC wrote to all trust and company service providers in March 2013 on this topic.

62. It was noted that the JFSC has similar access and enforcement powers as the JCA and has a long experience of using these. Sharing of experience could benefit the JCA, and the relationship enjoyed by the JCA and the JFSC has recently strengthened (see also sections B.1.1 below). The JCA, when facing uncooperative service providers, can also inform the JFSC of the difficulties for checks on the compliance of the service provider, to ensure that it respects its record keeping obligations.

Exchange of ownership and identity information in 2010-12

63. During the three years under review Jersey's exchange of information partners requested ownership and identity information in many instances. More than half of the ownership and identity information requested related to companies, and the rest to trusts, individuals and a few partnerships for a total of 66 EOI requests. No request was received concerning foundations.

64. The types of identity and ownership information requested included the identity of the trustees, settlors and beneficiaries of trusts, shareholding and directorship of companies and partnerships, as well as information on beneficial ownership and ultimate beneficial ownership.

65. It has happened on three occasions that the ownership or identity information requested was reported to not be available in Jersey. Two types of issues arose, related to (i) registered office services in Jersey and (ii) trusts with no other nexus than having been created under Jersey law. These issues are illustrated by the following case examples. In the first case, in 2010, a service provider declared that he was providing only registered address services and was not in possession of the ownership information required by the JCA. It is unclear why the matter was not pursued further since the information should have been kept at the registered office (see part A of the 2011 Report on the Availability of information). The file of the case does not provide explanations and the new JCA affirmed that they would act differently today

2. www.jerseyfsc.org/the_commission/general_information/public_statements/public_statements.asp.

by repeating the notice and enforcing the law if necessary, but also by being more proactive in requesting the ownership information available with the JFSC rather than relying only on the source of information mentioned in the EOI request received (see also the last sub-section of section B.1.1 on *Access powers* for further discussion on measures taken and an improving co-operation between the JCA and JFSC).

66. In the second case, a requesting authority asked Jersey whether two trusts purportedly created under Jersey law existed. It was not possible to determine whether the two trusts actually existed as the requesting authority was not able to provide the name of the information holder in Jersey, so the JCA did not know where to look for the information. As noted in the 2011 Report, in practical terms, where a trust has a significant nexus to Jersey such as a trustee that is acting as such in the course of a Regulated Business, Jersey has in place an oversight regime by which it may ensure and enforce the availability of information. It is only where a trust has been created under Jersey law but has no other nexus to Jersey, that information may not be available in Jersey. What proved impossible in this case was to make the connection between the name of the trust and an information holder, if any, in Jersey, as the only possibility would have been to ask all trust service providers licensed in Jersey, i.e. 120 JFSC licensees.

67. The type and complexity of the requests varied during the period under review. Some requests were simple and related to the ownership and directorship of a specific company. Some other requests were more complex, and for instance in a 2012 case, a large amount of information was requested, including information such as directorship, shareholding and beneficial ownership related to individuals, corporations and a trust. This case was the occasion of multiple interactions between the two competent authorities, as further details were sought, and finally 223 pieces of information were exchanged in the form of a CD-ROM with all scanned documents.

68. Mention should also be made of 29 requests looking for information on the ultimate beneficial ownership of companies, which requests Jersey has been able to respond to fully because of the wealth of information available on the ultimate beneficial owners in the offices of the licensed trust and company service providers, or in the Company Registry when it relates to the beneficial owners at the time of the creation of a company (i.e. founders).

69. It has also happened on one occasion that some old information was requested, i.e. documents made more than five years before the EOI request, and the JCA nonetheless tried to gather this information from the information holder, and obtained part of it.

70. Element A.1 remains determined to be “in place” and rated “Compliant”.

Determination and factors underlying recommendations

| Phase 1 determination |
|--------------------------|
| The element is in place. |
| Phase 2 rating |
| Compliant. |

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

71. The 2011 Report highlighted two deficiencies with the legal and regulatory framework of Jersey for ensuring the availability of accounting information. Firstly, it was found that obligations to maintain reliable accounting records, including underlying documents in line with the Terms of Reference are not consistently in place for relevant entities and arrangements in all instances. Second, with respect to all limited partnerships, separate limited partnerships and incorporated limited partnerships, trusts and foundations, there was no express obligation requiring the keeping of accounting records and underlying documentation for any minimum period. The 2011 Report found that element A.2 was “in place, but certain aspects of the legal implementation of the element need improvement”. The element was rated as “Partially compliant”.

General requirements (ToR A.2.1) and Underlying documentation (ToR A.2.2)

72. Following the 2011 Report, Jersey adopted the Taxation (Accounting Records) (Jersey) Regulations 2013 (hereafter, the “Accounting Regulations”) which entered into force on 11 June 2013, and addressed these deficiencies. These regulations are adopted under the powers provided by the Taxation (Implementation) (Jersey) Law 2004, which allows regulations to be adopted as necessary for the implementation of Jersey’s EOI agreements and to deal with matters arising from such agreements (s. 2(1)). The obligations under the Accounting Regulations apply in addition to, and supplement, the account-record keeping obligations that exist by virtue of other laws and common law.

73. The Accounting Regulations set out account record keeping obligations for every person that is in receipt or possession of: (i) any income; (ii) any profits arising from the carrying on of a business; or (iii) any profits arising from the letting of property. The term “person” includes “any body of

persons whether corporate or unincorporated” (Interpretation (Jersey) Law 1954) (Defined Expressions, Schedule, Part 1). The Jersey authorities explain that it applies to legal entities and arrangements as well as individuals. The Accounting Regulations are thus applicable to trusts whereby the trustee, as the person in receipt or possession of trust income, would be obliged to keep the specified accounting records and underlying documentation (further described below). Accordingly, the Accounting Regulations apply to all relevant entities and arrangements that are in receipt or possession of income or the abovementioned types of profit.

74. All persons that are subject to the Accounting Regulations are required to make and keep accounting records that (i) enable the preparation of accounts, (ii) show and explain that person’s transactions, and (iii) disclose with reasonable accuracy, at any time, the financial position of the person at that time (reg.3(1) & (2)). This provision ensures that all relevant entities and arrangements are required to keep accounting records, in line with ToR A.2.1.

75. The Accounting Regulations also set out clear obligations for underlying documentation to be kept in line with the international standard, both in cases where the person/entity carries on business and where it receives income otherwise:

- (i) For persons carrying on a business, their accounting records must contain: (1) records of all amounts received and expended by the business and the reasons for the receipt or expenditure; (2) for a business dealing in goods, all records of sales and purchases of goods made in the course of business; and (3) records of all assets and liabilities of the business. All such records must be supported by underlying documentation, such as invoices, receipts, certificates, contracts or vouchers.
- (ii) For all other persons to whom the Accounting Regulations apply but who do not carry on a business, their account records must contain, in relation to their income: (1) records of all amounts received, arising or accruing; (2) the names and descriptions of the sources of such amounts; (3) records of all assets and liabilities of the person; and (4) any other records that may contain information which is relevant or potentially relevant to the person’s tax liability (reg.3(4) (a) – (d)). Jersey’s authorities confirmed that the term “tax” as used in the context of point (4) is broadly defined and not only limited to tax imposed by Jersey. Again, the records described under (1), (3) and (4) must be supported by underlying documentation (reg.3(4)(e)).

76. The above account record-keeping requirements are supported by enforcement measures. The Comptroller can check on a person’s compliance with these record-keeping obligations by serving a notice to require him/her

to produce all or part of the accounting records for inspection within a specified period of time (reg.5(1)).

77. Financial penalties apply for failure to comply with obligations in the Accounting Regulations. A person who, without reasonable excuse, fails to maintain accounting records to the standard required by the Accounting Regulations, or to furnish the Comptroller with the records in compliance with a notice, is guilty of an offence and can be fined GBP 5 000³ (EUR 6 100) (reg.3(5) & 5(2)). Any person who negligently furnishes the Comptroller with incorrect accounts or records can also be fined GBP 5 000 (EUR 6 100); and where such act is done fraudulently, the person is liable to imprisonment for a term of five years and a fine (reg.7(1) & (2)).

78. Finally, as noted under part A.1 on the availability of ownership information, the Taxation (Miscellaneous Provisions) (Jersey) Regulations 2012, which amended the regulations governing the access powers of the Jersey competent authority, introduced a new provision on the protection of evidence to reinforce the record keeping obligations in Jersey (reg.11).

79. In addition, the EOI Regulations provide that a person who is liable to pay tax in a third country must keep any document that contains tax information that is relevant to that person's liability (reg.10C TIEA Regulations; reg.10C USA Regulations; reg.14C DTA Regulations). "Tax information" is broadly defined to include all "foreseeably relevant" information and as such, could include the accounting records of that person. Failure to comply with this requirement without reasonable excuse is an offence, which is punishable by a fine of GBP 5 000 (EUR 6 100) (reg.10C(4) TIEA Regulations; reg.10C(4) USA Regulations; reg.14C(4) DTA Regulations).

80. The Accounting Regulations ensure that all relevant entities and arrangements have an obligation to maintain reliable accounting records, including underlying documents in line with the standard, thus addressing the deficiency noted in the 2011 Report, and the recommendation is removed.

5-year retention standard (ToR A.2.3)

81. All accounting records and underlying documentation are required to be kept under the Accounting Regulations for a minimum period of six years (reg.4(1)). Failure to do so, without reasonable excuse, is an offence and punishable by a fine of GBP 5 000 (EUR 6 100) (reg.4(2)). The record keeping obligation under the EOI Regulation is also of six years (reg.10C TIEA Regulations; reg.10C USA Regulations; reg.14C DTA Regulations).

3. This is the monetary value of a fine at level 4 on the standard scale since 2004 (Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993).

82. Where records and documents that are required to be maintained under the Accounting Regulations are kept outside of Jersey, the person on whom the record-keeping obligation rests is required to ensure that those records (including underlying documentation) remain under his/her control or power (reg.6(1)(a) Accounting Regulations). There must also be effective arrangements in place to ensure that these can be made available in Jersey if so requested by notice from the Comptroller or when required for compliance with income tax obligations (reg.6(1)(b)). A person who, without reasonable excuse, fails to comply with this requirement is guilty of an offence and can be fined GBP 5 000 (EUR 6 100) (reg.6(3)).

83. The minimum document retention period under the Accounting Regulations apply to all legal entities and individual persons (including trustees) that are in receipt or possession of income or of profit from conducting business. Similarly, the EOI Regulations apply to all relevant persons regardless of legal form. Accordingly, the concern regarding the lack of a minimum retention period for LPs, SLPs, ILPs, foundations and trusts is addressed and the 2011 Report recommendation on this issue is removed.

In practice

Enforcement of accounting obligations

84. The enforcement of the accounting obligation of Jersey entities is ensured together with the enforcement of the ownership information, predominantly by the JFSC (see above section A.1.6). Participants from the Jersey private sector stated that Jersey accounting firms in practice hold the accounting information up to a period of 10 years. They added that in practice this is also done with a view to a limitation of possible contract claims, which can be an issue for up to 10 years. Further to this, Jersey reiterated that common law provides for accounting information to be kept for a longer period than six years, notably in relation to trusts.

85. The new provisions of the 2013 Accounting Regulations are enforced by the Comptroller of the Taxes Office. Since the amendments were made less than a year ago, no enforcement action has been taken and no notice to produce accounting records on the basis of the new Accounting Regulations has yet been issued, and no penalties were applied for breaches of the Regulations.

Exchange of accounting information

86. During the three-year review period, Jersey received 65 EOI requests in relation to accounting information from eight EOI partners. The Jersey competent authority has been requested accounting information such as

annual accounts, financial statements, transactional information, copies of invoices, and ledger data. A peer noted that accounting information was provided in a timely and proper manner, and that the information was of good quality and/or relevant to the investigation. Another peer noted that the requested information was provided mainly within three months.

87. As mentioned in A.1 and B.1, two peers were informed that the requested information was not available in Jersey, but was located in other jurisdictions. In both cases, the company involved only had a registered office in Jersey, and the directors and company secretary as well as the information requested were located in other jurisdictions. In the case of accounting information, this conformed to the law that did not require that the records be kept in Jersey (contrary to ownership information). This situation has been addressed by the new Accounting Regulations which entered into force on 11 June 2013, which clarify that where accounts are kept outside of Jersey, the person on whom the record-keeping obligation rests is required to ensure that those records (including underlying documentation) remain under his/her control or power (reg.6(1)(a) Accounting Regulations, see above). The same situation should therefore no longer be an impediment to effective exchange of information. Nevertheless, in practice, in both instances the Jersey competent authority wrote to the requesting authorities to explain the situation. Further, in one case the requesting authority was also informed about the jurisdictions where the requested information should be available. This peer noted that the Jersey competent authority made a lot of effort to assist them.

88. The Phase 1 recommendations further related to LPs, SLPs, ILPs, trusts and foundations. Accounting information was requested concerning seven LPs, of which information was not exchanged because of the lack of foreseeable relevance of the EOI request in six related cases. Accounting information has been exchanged concerning seven trusts on the form of balance sheets and trust accounts; but no underlying documents were requested during the period under review. There were no requests concerning SLPs, ILPs or foundations during the period under review.

Conclusion

89. Jersey has adopted the 2013 Accounting Regulations, pursuant to which accounting records and underlying documentation are required to be retained by all relevant legal entities and arrangements for a minimum period of six years. Alternatively, where records are kept outside of Jersey, the person on whom the record-keeping obligation rests is required to ensure that those records remain under his/her control or power. Accordingly, both A.2 recommendations from the 2011 Report have been addressed and are removed. Consistent with the arguments put forward in 2011, the Jersey authorities still consider that despite the Phase 1 recommendations made at

that time, there has never been a problem in ensuring that adequate accounting records are kept and information is available to respond to requests.

90. Issues have arisen twice to date in relation to the non-availability of accounting information in Jersey because records were kept abroad. In addition, the implementation of the new Regulations is too recent (and after the period under review) to have sufficient information on enforcement measures taken by the Jersey tax authorities on the basis of these regulations. However, the Jersey authorities have indicated that enforcement of the accounting obligations have been and will continue to be carried out by the JFSC. Finally, Jersey’s EOI records on exchanging accounting information on trusts, partnerships and foundations is also limited (information was exchanged in eight instances but not on underlying documentation as this was not requested) and thus the availability of underlying information has not been tested in practice. The implementation of the new tax provisions on the availability of accounting information should be monitored in practice, either separately or as part of existing enforcement mechanisms.

91. As a result, the determination is therefore upgraded to “in place” and the rating is upgraded to “Compliant”.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|--|
| The element is in place but certain legal aspects of the legal implementation of the element need improvement. | |
| Factors underlying recommendations | Recommendations |
| Obligations to maintain reliable accounting records, including underlying documents in line with the Terms of Reference are not consistently in place for relevant entities and arrangements in all instances. | Introduce consistent obligations for all relevant entities and arrangements to maintain reliable accounting records, including underlying documents in line with the Terms of Reference. |
| There is currently no express obligation in respect of all LPs, SLPs, ILPs, trusts and foundations to maintain reliable accounting records for a 5 year minimum period. | Clarify binding requirements on LPs, SLPs, IKPs, trusts and foundations, to maintain reliable accounting records for at least a minimum 5 year period. |

| Phase 2 rating |
|----------------------------|
| Partially Compliant |

A.3. Banking information

Banking information should be available for all account-holders.

92. The 2011 Report did not raise any concerns with respect to the availability of banking information in the 42 subsidiaries and branches of foreign banks registered in Jersey. The combination of the anti-money laundering (AML) regime and licensing requirements for deposit-taking institutions impose appropriate obligations to ensure that all records pertaining to accounts as well as related financial and transactional information are available in Jersey.

93. Further reinforcement to the provisions described in the 2011 Report is now provided by an additional obligation introduced to the EOI Regulations through the Taxation (Miscellaneous Provisions) (Jersey) Regulations 2012 (the “2012 Amendments”) entered into force on 9 October 2012.

94. The TIEA Regulations (as amended in 2012) provide that a person who provides financial services (including banking services) to a person who is liable to pay tax in a third country must keep any document created in the provision of financial services that contain tax information for a period of six years (reg.10C(2) & (3)). Similar provisions were also added to the USA Regulations (reg.10C) and the DTA Regulations (reg.14C). As discussed in part B.1 below, “tax information” is broadly defined to include all “foreseeably relevant” information. Failure to comply with this requirement without reasonable excuse is an offence, which is punishable by a fine of GBP 5 000 (EUR 6 100) (TIEA Regulations reg.10C(4); USA Regulations reg.10C(4) ; DTA Regulations reg.14C(4)).

95. The JFSC is in charge of ensuring that financial institutions implement the laws and regulations on the identification of clients and keeps transactional information. The compliance department meets with each of the 42 banks present in Jersey on an annual basis to review their business strategy, and performs inspection visits in relation to specific topics across the industry.

Availability of banking information in practice

96. More than 100 EOI requests contained at least one banking information question, that was requested from banks in the period under review (2010-12). In more than half of the cases, these were simple requests for banking information concerning individuals. Some banking information was also requested concerning corporate clients, and to a lesser extent partnerships and trusts. The types of banking information exchanged include current balances, transactional information, transfers, deposits, withdrawals, documentation submitted when opening an account, the name and address of

the parties with authorised access to a bank account, the existence of a bank account, and the name of a specific bank account holder. If the name of the bank would be unknown, the JCA would send notices to all the 42 banks, but this has not occurred in practice.

97. In the vast majority of the cases, banking information requested was provided and exchanged.

98. In three cases, Jersey received requests from different treaty partners for information on bank accounts not held in Jersey. This situation is due to the fact that Jersey banks are all branches or subsidiaries of UK or other banks and the complete bank account number alone does not allow the authorities to know whether the bank account is held in Jersey, Guernsey or the Isle of Man (until Jersey enters the Single Euro Payments Area for which all bank account numbers will have to include a SWIFT Bank Identifier Code and International Bank Account Number (IBAN)). In these cases, the Jersey branch informed the Jersey competent authority that the bank account was not held in the island, but probably in another UK Crown dependency. The JCA informed the requesting authority accordingly, and encouraged it to submit a request to the other Crown dependencies where the bank account might be held. A representative of the Jersey Bankers Association indicated that an alternative would be to send the request to the United Kingdom, when the bank is a branch or subsidiary of a UK bank, since the mother company would know the location of all accounts held by the clients of its subsidiaries or branches. The JCA could usefully make this additional suggestion to the requesting authorities in future similar cases.

99. Element A.3 remains determined to be “in place” and rated “Compliant”.

Determination and factors underlying recommendations

| Phase 1 determination |
|---------------------------------|
| The element is in place. |
| Phase 2 rating |
| Compliant. |

B. Access to Information

Overview

100. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. The 2011 Report found that element B.1 (access to information) was “in place, but certain aspects of the legal implementation of the element need improvement” and rated “Largely compliant”, whilst element B.2 (notification requirements and rights and safeguards) was “in place” and rated “Compliant”.

101. Under element B.1, the 2011 Report highlighted that Jersey’s domestic legislation providing for access to information contained impediments that may significantly affect access to relevant information, by way of limiting the scope of obtainable information and imposing additional procedural burdens for the exercise of the access powers. These impediments were identified in: the Taxation (United States of America) (Jersey) Regulations 2006; the Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008; and the Taxation (Double Taxation) (Jersey) Regulations 2010 (together, the “EOI Regulations”). Jersey was recommended to amend its domestic legislation to remove these impediments to effective access to relevant information.

102. Since the 2011 Report, Jersey adopted the Taxation (Miscellaneous Provisions) (Jersey) Regulations 2012 (the “2012 Amendments”) which amended the EOI Regulations as of 9 October 2012 and addressed the impediments described in the 2011 Report. Accordingly, the Phase 1 recommendation made in the 2011 report is removed.

103. The gathering of information for EOI purposes was performed effectively and exchanged in most cases over the three years under review (2010-12).

104. However, some issues arose in the gathering of information from some information holders. In addition to the occurrence in practice of some of the impediments noted in the 2011 Report (e.g. the definitions of “taxpayer” and person “liable to tax”), the drafting of the powers was such that it opened the door to challenges and objections against the competent authority notices on whether the subjective conditions were met, notably on what is considered “reasonable measures”. The notification and appeal process also proved to be burdensome and led to a high proportion of challenges of the notices on elements that should have been left to the appreciation of the competent authority. Appeals also appear to have been used in some cases to frustrate and delay the exchange without being based on sound grounds.

105. To address these issues, the Jersey authorities further amended the TIEA Regulations in 2013 with the adoption of the Taxation (Exchange of Information with Third Countries) (Amendment No. 7) (Jersey) Regulations 2013, entered into force on 6 November 2013. These amendments, made following discussions with a peer on the effectiveness of the existing legal and regulatory framework, revise the access powers in depth, with a simplification of the process and the limitation of the appeal process to a judicial review. Similar amendments have been made to the DTA Regulations in April 2014. The USA Regulations were also repealed in 2014 and the TIEA with the United States is now implemented in the same way as other TIEAs, under the TIEA Regulations.

106. Access powers of the Jersey competent authority have also been confirmed and reinforced by judicial decisions on access powers for EOI purposes: The Royal Court and the Court of Appeal took decisions in favour of the Jersey competent authority and clarified the scope of his obligations and serve as authoritative source for subsequent court decision on EOI requests. This is expected to positively impact exchange of information in future.

107. These amendments, positively tested once in practice, should address the additional shortcomings identified in the period 2010-12. Elements B.1 and B.2 are determined to be “in place”. However, the 2012 amendments entered into force at the end of the three year review period for this Supplementary report (2010-12) and the 2013 and 2014 amendments after the period under review. It is therefore not possible at this stage to fully assess their impact in practice, nor to determine the extent of the improvements achieved in the effectiveness of the gathering and exchange of information. A recommendation is therefore made that the Jersey authorities monitor the implementation of the amended EOI Regulations to ensure that they allow for an efficient gathering of information.

108. Independently from the issues that led to amendments to the regulations, it also appears that the process put in place to gather information has not produced the expected results in a small number of cases. When the

service provider or person concerned requested to provide information failed to do so in a timely manner, the Jersey competent authority has not always pursued all possible avenues to gather information, or has not diligently done so, when another source of information was available. This led to delays or unsuccessful exchange of information in this type of cases. The Jersey competent authority took note of this deficiency and has started taking corrective actions at the end of the period under review, and should continue.

109. The shortcomings and weaknesses noted in practice, and the impossibility to assess the impact of the new regulations in practice considering the period under review, lead to elements B.1 and B.2 being rated as “Largely compliant”.

B.1. Competent Authority’s ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

110. Jersey’s competent authority is the Minister for Treasury and Resources, who delegates his power to the Comptroller of Taxes, and since 2012 also to the Deputy Comptroller of Taxes (International) (together the competent authority or JCA). Access powers for EOI purposes have been in practice exercised by the Comptroller up to March 2012, and are exercised by the Deputy Comptroller since then.

111. The power of the competent authority to obtain access to relevant information in respect of an EOI request is found in the regulations (EOI Regulations) made under the Taxation (Implementation) (Jersey) Law 2004:

- Taxation (Double Taxation) (Jersey) Regulations 2010 (DTA Regulations), as amended in 2012 and 2014, which concern matters arising in respect of Jersey’s double tax conventions listed in its Schedule 1;
- Taxation (United States of America)(Jersey) Regulations 2006 (USA Regulations), as amended in 2012, which concern matters arising in respect of Jersey’s tax information exchange agreements (TIEA) with the United States up until 2014 when they were repealed;
- Taxation (Exchange of Information with Third Countries)(Jersey) Regulations 2008 (TIEA Regulations), as amended in 2012 and 2013, which concern matters arising in respect of all of Jersey’s TIEAs (other than the USA TIEA until 2014).

112. The USA Regulations, in force during the period under review, were subsequently repealed in 2014. The TIEA with the United States was the first such agreement entered into by Jersey in 2006, and initially it was

thought that each agreement would call for a specific set of Regulations. In 2008, Jersey considered it was more appropriate to have omnibus TIEA Regulations, with the individual jurisdictions referred to in its Schedule. In 2014, Jersey decided to revoke the USA Regulations and include the United States in the Schedule to the TIEA Regulations.

113. The Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014 adopted on 23 January 2014 give effect to the provisions in the Multilateral convention. The Regulations also provide that when a competent authority of a Party to the convention requests tax information from the Jersey competent authority, the provisions in the TIEA Regulations will apply to that request, once the convention will have entered into force in Jersey on 1 June 2014.

114. The EOI regulations were amended twice since the 2011 Report. Once in 2012, and then in 2013 for the TIEA Regulations and in 2014 for the two other pieces of regulations. The Jersey authorities took the initiative to amend the TIEA Regulations in November 2013 because of pressing need to solve a number of bilateral issues and pending EOI cases (received during and after the period under review). The authorities later amended the DTA Regulations in April 2014 to align them on the TIEA Regulations, and merged the USA Regulations with the TIEA Regulations.

115. The competent authority's powers to access information do not vary depending on the type of information sought. That is, the powers can be consistently applied regardless of whether the information is ownership, identity, banking or accounting information.

116. In each of the EOI Regulations, the power to obtain information from a taxpayer is stated separately from the powers to access information from all "other persons", being for example, a government authority, bank, company, trustee or individual. At the time of the 2011 Report the Jersey competent authority was able to obtain information: from a taxpayer pursuant to either a notice (reg.2) or court order (reg.7); from an "other person" pursuant to either a notice (reg.3) or a court order (reg.8); and by search of premises and seizure of information (reg.12). The power to ask for a court order (reg.7 and 8) was removed in 2013 and 2014, and the power to apply for a search and seizure warrant expanded.

117. The conditions of exercise of the access power of the Jersey competent authority have been confirmed and clarified by several judicial decisions during and after the period under review. The Royal Court and the Court of Appeal decisions in the Volaw case (the latest dated November 2013) serve as

authoritative sources for subsequent court decisions on EOI requests, namely the APEF case of December 2013 and the Fladgate case of March 2014.⁴

Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)

118. The 2011 Report highlighted certain impediments in the domestic legislation for accessing information for EOI purposes restricting the ability of Jersey’s competent authority to obtain information necessary for effective EOI. The issues identified can be categorised as those that (a) impacted upon the scope of obtainable information (in all three EOI Regulations or in the DTA Regulations only) and (b) imposed additional procedural burden in the exercise of the access powers.

119. Revisions to the EOI Regulations were introduced by the 2012 Amendment Regulations. The TIEA Regulations were further amended by the Taxation (Exchange of Information with Third Countries) (Amendment no. 7) (Jersey) Regulations 2013 that entered into force on 6 November 2013. These further amendments served two main objectives, according to the report presented to the legislative assembly of Jersey: “Firstly, it had become increasingly evident from the experience of other jurisdictions in their compliance with the international standards for exchange of tax information, and from assessments of compliance carried out by the Global Forum, that the [2012] Regulations had a number of shortcomings that needed to be addressed. Secondly, it had become clear that these shortcomings had been a particular and material factor in delaying the response to requests for information received from [one TIEA partner]”. The USA Regulations and DTA Regulations were similarly amended by the Taxation (Miscellaneous Provisions) (Jersey) Regulations 2014. The 2012 and 2013-14 amendments address the issues identified in the 2011 Report, as well as other impediments experienced more recently, as further discussed in turn below.

4. Volaw Trust & Corporate Services Lts and Mr Larsen v. the Office of the Comptroller of Taxes; Royal Court 16 May 2013 and Appeal Court 28 November 2013; Royal Court, 30 December 2013, APEF Management Company 5 Limited vs the Comptroller of Taxes; Royal Court, 12 March 2014, Taylor Fladgate & Yeatman Limited vs Comptroller of Taxes acting as competent authority for Jersey.

The broadening of the scope of obtainable information

i) Issues identified in the three sets of EOI Regulations

120. First, the 2011 Report noted that, under the EOI Regulations, the Comptroller may issue a notice to a taxpayer requiring the production of information, documents or records which are “relevant to a liability to tax which the [person/taxpayer] is subject or may be subject, or to the amount of any such liability”. A concern was raised that the reference to “liability to tax” may not encompass all information that is “foreseeably relevant” to the “assessment or collection” of tax. A similar concern arose from the use of the term “taxpayer” within the EOI Regulations, defined as “a person whose liability to pay tax is under examination or investigation in a third country”.

121. In practice some information holders challenged notices received from the Jersey competent authority on the basis of the absence of tax liability of the person concerned in the requesting jurisdiction (and therefore questioning the taxpayer status) (see below the section on Practice).

122. The 2012 amendments remove from the EOI Regulations the reference to any liability to tax and a “taxpayer” is now defined as “the person who is the subject of a request” (reg.1(1)). The term is no longer defined by reference to “liability to tax” and therefore the potential restrictiveness of the scope of obtainable information that could arise from such a reference is removed.

123. Second, the 2011 Report noted that the form of tax information that could be obtained from third persons under the notice power (reg.3) or court order power (reg.8) was narrower than that which could be obtained from a taxpayer. The powers to access information held by third persons appeared to only cover information contained in a “document or record” and not necessarily information that existed outside of such forms.

124. In practice, the Jersey competent authority has been able to request other information, such as statements, in the form of a document, thus avoiding this issue.

125. Changes were nonetheless introduced to the EOI Regulations to conform the scope of obtainable information to that required to be exchanged under each corresponding form of EOI agreements, regardless of whether this information is obtained from a taxpayer or a third party. The concern of the form of the information is addressed by the introduction of new regulation 1A(2) to each set of EOI Regulations, which again applies for all types of access powers. Regulation 1A(2) clarifies that “tax information may either be (i) in the form of information within an individual’s knowledge or belief; or (ii) information recorded in a document or any other record in any format that a person has in his/her possession, custody or control”. A new provision

is added to further reflect this change: New regulation 10B is inserted to indicate that where a person provides evidence in the form of a deposition or statement, the deposition or statement must be in such a form that it will be receivable as evidence in the requesting jurisdiction.

126. In addition, all the powers now apply with reference to a single, uniformed, definition of “tax information”. New regulation 1A(1) of the TIEA Regulations, the wording of which echoes Article 1 of the Model TIEA, provides that:

“tax information” means information that is foreseeably relevant to the administration and enforcement, in the case of the person who is the subject of a request, of the domestic laws of the third country whose competent authority is making the request concerning any tax listed in the third column in the Schedule opposite the entry for that third country,⁵ including information that is foreseeably relevant to (a) the determination, assessment and collection of such taxes; (b) the recovery and enforcement of such taxes; (c) the recovery and enforcement of tax claims; or (d) the investigation and prosecution of tax matters.

127. A similar definition of “tax information”, patterned on the wording of the Jersey-USA TIEA, was set out in regulation 1A(1) of the USA Regulations with the 2012 amendments. The definition of “tax information” in the revised DTA Regulations also widens the scope of obtainable information to enable EOI to the standard.⁶

ii) Issues identified in the DTA Regulations

128. The 2011 Report highlighted three issues which applied to the DTA Regulations only, two impacting all DTAs and the last one specific to the treaty with Guernsey. In practice, the only treaty relied on for exchange purposes was the one with the United Kingdom, which contains a limitation to exchange of information already available to the tax administration (it is now supplemented with a TIEA). As a result, none of the issues materialised in practice in 2010-12 since the DTA Regulations have not been used. The

5. The taxes listed in the Schedule for each third country correspond to those set out in the respective TIEA under the Article headed “Taxes covered” (i.e. Article 3 of the Model TIEA).

6. new regulation 1A(1) defines “tax information” as “information that is foreseeably relevant to the administration or enforcement of the domestic laws of the third country whose competent authority is making the request under a DTA concerning taxes of the third country that may be the subject of the exchange of information under the DTA”.

Jersey authorities nonetheless amended the Regulations to avoid any future problems in practice.

129. The first issue concerned the definition of “tax information”, which appeared to limit the information which Jersey’s competent authority could provide to a treaty partner to that which “Jersey, in accordance with the terms of a DTA, is obliged to provide” (emphasis added), and not information which it might have the discretion to provide. This concern is now addressed by the revised definition of “tax information” which clearly states that tax information means information “... that may be the subject of the exchange of information under the DTA”. This wording ensures that both information that Jersey has the discretion to provide, as well as information that it is obliged to provide, under a DTA, are considered as exchangeable with its treaty partner.

130. The second concern was that the original DTA Regulations lacked an express definition of “possession” to encompass also the notions of “control” and “custody”, unlike the original TIEA Regulations and USA Regulations. This concern is now addressed by the wording of new reg.1A(2)(ii) which expressly states that tax information may be “information recorded in a document or any other record in any format that a person has in his/her possession, custody or control” (emphasis added).

131. Finally, the DTA with Guernsey was not listed in Schedule 1 to the DTA Regulations, which were therefore not applicable to gather information to answer a Guernsey request. The DTA signed with Guernsey in January 2013 and in force since 9 July 2013 has now been scheduled to the Regulations,⁷ in the same way as the new DTAs signed since the 2011 Report with Estonia; Hong Kong, China; Qatar; Singapore; and Isle of Man.

Procedural changes to accessing information held by third parties

132. As noted above, the 2011 Report highlighted certain impediments in the domestic legislation for accessing information for EOI purposes, restricting the ability of Jersey’s competent authority to obtain information necessary for effective EOI, including by imposing additional procedural burden in the exercise of the access powers.

133. First, under the original EOI regulations, in order for Jersey’s competent authority to issue a notice to obtain information from a third person, he must have had reasonable grounds for believing that the taxpayer concerned may have failed to or may fail to comply with a domestic law of a third country concerning tax and that the failure is “likely to have led or is likely to lead to serious prejudice to the proper assessment or collection of tax” (emphasis

7. The 1956 DTA with Guernsey was terminated and the Double Taxation Relief (Arrangement with Guernsey) (Jersey) Act 1956 was repealed.

added, reg. 3(1) of the original TIEA Regulations). A similar “serious prejudice” threshold existed for the use of the court order power (reg. 8(2) of the original TIEA Regulations). The inclusion of a “serious prejudice” threshold created an additional requirement to those set out in the Model TIEA and Jersey’s EOI agreements. As a result, EOI requests which were valid under the EOI agreements may nevertheless have not satisfied the domestic legislative requirement, thereby leaving Jersey’s competent authority unable to obtain the requested information. The same concept of “serious prejudice” to a tax investigation is used to decide on issuing a search warrant (reg.12).

134. As noted below under *Practice*, the drafting of regulation 3 led to some challenges of the notices issued by the Jersey competent authority to third parties. This concern is addressed through revisions made to the EOI Regulations in 2012. The notice power for obtaining information from third persons can now be exercised so long as “the competent authority of Jersey decides that it is reasonable to respond to a request concerning a taxpayer” and the information is reasonably required for that purpose (reg. 3(1) of the revised TIEA Regulations). The “serious prejudice” requirement has also been removed in relation to the court order power (revised reg. 8), but remains for search and seizure (but later amendments addressed the concern by enlarging the list of eligible grounds for a warrant, see also B.1.4 below on *Enforcement*). The new regulation 3 opportunely simplifies the description of the circumstances in which the Comptroller may impose to a third party a requirement to provide information about the person concerned.

135. Second, prior to the 2012 amendments of the EOI Regulations, all notices requesting the provision of information by third persons had to name the taxpayer to whom it related (reg.5 of the TIEA Regulations). This was a concern since Jersey’s competent authority may not always know the name of the taxpayer under a valid EOI request. This name requirement was removed by the 2012 Amendment Regulations; instead, new regulation 3(3) provides that “[w]here a third party notice does not name the taxpayer to whom it relates, “it must provide an account number or other, similar, identification for the tax information required”. This reflects the wording used in the Commentary to the Model TIEA (para. 58), which provides as an example that where the name of the accountholder is not known by an EOI partner requesting bank information, the provision of “the account number or similar identifying information” may satisfy the requirement of Article 5(5)(a) of the Model TIEA. Jersey’s authorities explained that they take a broad view as to the types of information that may be considered as “similar” identification for the purpose of reg.3(3). To remove any possible ambiguity that the provision may have, the 2013 amendments to the TIEA Regulations and the 2014 amendments to the DTA Regulations simply indicate that when a name is not provided, the notice must provide “an account number or other identification”. The Jersey competent authority has already applied a broad

interpretation of this concept for instance where the person concerned has been identified as “the owner of a named ship” (but after some clarifications were requested from the requesting authority – see below *Practice*). The same occurred in the Fladgate case, where the notice to the third party identified the persons as the beneficial owners of the company resident in the requesting jurisdiction (even though the Jersey competent authority had received the names of the persons suspected of being the owners).

136. In summary, all of the issues identified in the 2011 Report with respect to the potentially restrictive scope of obtainable information for EOI purposes and additional procedural burdens have been addressed by the revisions introduced by the amendments to the EOI Regulations.

Further amendments to the EOI Regulations

137. Further amendments were made in 2012 to the EOI Regulations, not linked to the recommendation in the 2011 Combined report, and new amendments were also made to the TIEA Regulations in November 2013 and to the DTA Regulations in April 2014.

138. Some amendments aim to speed up the gathering and exchange process, such as the removal of the express requirement for the JCA to initiate an informal process to request tax information from a third person prior to the issuance of a written notice for information (reg.3 of the EOI Regulations). In practice, only the JFSC provided information in response to an informal notice. Service providers request the competent authority to issue a formal notice before providing information, considering their confidentiality duty vis-à-vis their clients. The informal procedure was kept for the taxpayers, as it was felt that they may be more interested in it, but ultimately it was also removed in the case of requesting information from a taxpayer by the 2013 Amendments to the TIEA Regulations (reg.2(3)), as no one ever submitted information without a formal notice. It was considered that having both an informal notice and a formal notice delayed the gathering process in many instances. The JCA can still issue informal notices where it is felt useful, but this is no longer an obligation. Finally, the minimum time to be specified in a notice has been reduced from 30 days to 15 days (reg.4). The same amendments were made to the DTA Regulations in 2014.

139. Jersey courts discussed the issue of formal vs informal notices in case law. As a result, some uncertainty remains as to whether the production of an informal notice might still be considered necessary. First, the Court of Appeal judgment in the Volaw case states that “Elementary fairness does seem to us, prima facie, to require the Comptroller to give the person the chance to make representations so as to avoid, it may be, entering into the terrain of notices and the possibility of penal sanctions for non-compliance

therewith Regulation 3. (As to which see Regulation 15(2).)” Then, the Court in the December 2013 decision in the APEF case considered that “The repeal of Regulation 3(4) (which simply gave the third party an opportunity to provide the information, which the Comptroller had already decided to request, without the need of a formal notice) does not in our view detract from this finding [of the Court of Appeal in the Volaw case] as to procedural fairness, the purpose of which is to give the third party the chance to make representations before a formal notice is issued” (the judgement was issued in the context of the pre-2013 Regulations). Finally, the Court in the March 2014 decision in the Fladgate case noted that whereas no informal notice was given prior to the issuing of either of the two notices received, the appellant did not put this forward as a ground for judicial review and the judge considered that no unfairness resulted, in that the appellant were able to make representations and file evidence against the issuing of the first notice, that were taken into account by the competent authority and led to the withdrawal of the first notice and the issuing of the second notice. It is therefore unclear whether the production of an informal notice might be considered necessary in some cases.

140. The 2013 and 2014 amendments also remove from the EOI Regulations the power to request a court order against a person who would have failed to provide the requested information. The competent authority will now issue notices or request the Bailiff to issue a search and seizure warrant to gather information for EOI purposes. (see also part B.1.4 below)

141. Most importantly, the 2012, 2013 and 2014 amendments clarify the wording of the regulations on the notices issued to the taxpayer or third parties (reg.2 and 3) to limit challenges, notably on the uncertainty/ambiguity on what is “reasonable” to request them to provide.

142. Some steps were taken in 2012 when the provisions evolved from “the competent authority ‘may require’ the person to provide a document that ‘in the reasonable opinion’ of the competent authority ‘may’ contain relevant information”, to “the competent authority ‘decides’ that it is ‘reasonable’ to respond”. The 2012 amendments removed several subjective elements of the notice but some uncertainty/ambiguity remained on what was “reasonable” to request taxpayers and third parties to provide. The 2013 and 2014 amendments to the EOI Regulations went one step further by indicating that “where the competent authority ‘decides’ to respond... he ‘shall’ require the person to provide information”. With this new wording, the decision to issue a notice is clearly the one of the competent authority, who will no longer have to justify whether his decision is “reasonable” or not, and it will be presumed that he performs his task in accordance with the Jersey law and treaties. As a consequence, these amendments also remove the requirement for the competent authority to provide the taxpayer a written summary of reasons, since the

JCA no longer has to justify the reasonableness of his decision. These measures are expected to limit the number of objections and appeal (see also below part B.2 on Rights and safeguards).

143. The 2012 amendments to the EOI Regulations also made it clearer that the information that the JCA may seek under reg.2 is the tax information sought in the EOI request; therefore questions on whether the information requested is sufficiently linked to the EOI request should diminish.

Conclusion

144. As a result of all the amendments made to the EOI Regulations since the 2011 Report, the Phase 1 recommendation is removed and the determination is upgraded to “the element is in place”.

Access to identity, ownership and accounting information in practice

145. Jersey’s exchange of information partners requested almost the same numbers of ownership and accounting information during the three years under review (66 requests contained questions on identity and ownership information, and 65 on accounting information). More than half of the ownership and identity information requested related to companies, and the rest to trusts, individuals and a few partnerships. Accounting information related for two thirds to companies, and for the rest to individuals, partnerships and trusts.

146. The Jersey competent authority has used its information gathering powers for all but three TIEA cases.⁸ The JCA was able to answer these three requests and some other questions included in EOI requests from data in tax files, e.g. requests for income tax returns filed, question on tax residence status of a person, the financial statements of some entities. The competent authority was also able to exchange information extracted from publicly available sources on a number of occasions (at least a dozen times) as it has a fee-free access to the Jersey Financial Service Commission (JFSC) Registrar website.

147. The JCA used the power to issue informal and formal notices to third parties and the persons concerned by the EOI request. Information was

8. As noted earlier in the report, the competent authority has never used its information gathering powers to answer EOI requests based on DTAs, since the only DTA used during the period under review is the one with the United Kingdom, the EOI provision of which is very restrictive and allows only the exchange of information already available with the tax authorities. The UK is now using the TIEA with Jersey more frequently than the DTA.

almost always gathered from third parties (88%) – mainly trust and corporate service providers and more recently the JFSC (for ownership information on 13 occasions and once for accounting information). It happened only once that another public authority was consulted to gather information, when the JCA asked the investigation department of the Taxes Office to consult the parish authorities’ files on residence of an individual. The JCA also requested information from the persons concerned, but less frequently (12%). This is due to the nature of the entities about which information is requested – most of these are managed by Jersey trust and corporate service providers, but their owners are not tax residents in Jersey and therefore the JCA has requested information from the service providers.

148. The gathering of information was most of the time performed smoothly and information exchanged in a timely manner. However, input received from some peers and explanations provided by the JCA suggest that some difficulties occurred in practice during the period 2010-12. Firstly, in some of these cases some of the legal impediments identified in the 2011 Report appear to have materialised in practice, such as in relation to the definition of a person as a “taxpayer”, although the Jersey authorities consider that it is difficult to distinguish between the effect of any shortcoming in the Regulations and the problems arising from the nature of the requests received. Secondly, some further shortcomings in the drafting of the Regulations led to some difficulties (and to the 2013 and 2014 amendments), notably on what constitutes a reasonableness of issuing a notice. Lastly, in specific situations when the information holder did not diligently provide the requested information and an alternative and readily available source of information was available, the JCA could have been more efficient by opening alternative lines of investigation. Some corrective actions have been taken in law and practice, but the 2012 amendments were too recent to assess whether they would have had a significant impact on similar cases if they had recurred, and the 2013 and 2014 amendments were taken after the period under review.

i) Qualification of a person as a “taxpayer”

149. A few peers reported difficulties convincing the JCA or for the JCA to convince information holders of the validity of their request, on the basis of a loose identification as “taxpayer” of the person concerned. As noted above, before the October 2012 amendments to the EOI regulations, the notices had to be issued concerning named “taxpayers” concerning their “liability to taxes”. Several objections were raised and it took some time to solve the issues and gather the information requested.

150. This matter ended up being litigated in the Volaw case, where the Royal Court and Court of Appeal clearly stated that “it is no part of the JCA’s

function when deciding whether to issue a Reg.3 notice in response to an EOI request, or this Court’s function on any appeal from such a decision, to reach definitive conclusions about whether the person the subject of the request is or is not liable to foreign tax”.

151. The amendments to the EOI Regulations together with the court decision should prevent objections on this basis in the future.

ii) The dialogue with the record keepers on the “reasonable” test for the JCA to exercise his powers

152. In 21% of the requests received, the information holder objected to the notices issued by the JCA. The Jersey authorities indicate that 28 requests gave rise to objections in 2010-12: 25 from third parties and 3 from notified taxpayers. Twelve of these objections led to appeals and seven of these ultimately led to court hearings (six of these in a single EOI case; see also section B.2 on Rights and safeguards below). Whereas some of these objections and requests for clarification were justified, some others played on the deficiencies in the Regulations identified above and had the effect of frustrating the EOI process.

153. In some cases, the questions raised by the service providers appear justified, for instance on the exact scope of the accounting information required where the request related to the “detailed financial position” of the entity, which could have been interpreted in various ways, and the service provider diligently provided voluminous information after having received additional guidance.

154. A significant cause for the high level of objections and requests for clarification is to be found in the drafting of the EOI Regulations before the 2012 and 2013 amendments and their implementation in practice. When issuing a notice, the JCA explained the request to the service provider (and to the taxpayer concerned when issuing a “summary of reasons”). As noted above, the JCA justified in the notice the “reasonable” nature of the notice issued and, to do so, provided details on the request and underlying tax matter in the requesting jurisdiction. The service providers’ expectations on the level of details in information disclosed also significantly delayed the gathering process as service providers would ask for clarifications and raise objections on the foreseeable relevance of the information requested or procedural matters.

155. Objections covered a great variety of topics, from questioning the date of entry into force of an EOI instrument or the status of the signatory of the letter as competent authority (dismissed by the JCA) to challenges on the statements made by the requesting authorities or the foreseeable relevance of the requested information to a foreign tax investigation, and questions on the functioning of the tax law of the requesting jurisdiction.

156. On questions about foreign law, the Royal Court and Court of Appeal clearly stated in the Volaw case that “it is no part of the JCA’s function when deciding whether to issue a notice in response to an EOI request, or this Court’s function on any appeal from such a decision, to resolve contentious issues of [foreign] tax law”. It is therefore expected that this type of challenge will diminish in future.

157. Some third parties challenged the statements made by the requesting authorities that they had exhausted their internal means to obtain the information and the other required statements under Article 5 of the Model TIEA (such as the criminal nature of the matter) and the reasonableness of the notices issued. The JCA dismissed a number of those objections, and reiterated his notices, which sometimes nonetheless delayed the gathering process by several weeks. The JCA has also on a number of occasions given credit to the objections and turned to the requesting competent authority for clarifications (see part C.1.1 for a discussion on clarifications and foreseeable relevance). It occurred only once (in six inter-related EOI requests) where it has been judged that the requesting authority had not pursued all means available in its own territory to obtain the information requested (in the APEF case). The recent decision in the Fladgate case provides some useful indication on what exhaustion of internal means mean. The Royal Court dismissed the point raised by the appellant that the requesting jurisdiction should first ask information from the persons suspected of tax fraud before using EOI. The Court states that it seems somewhat naive to suggest that the requesting authority should inquire from those persons, who failed to declare beneficial ownership in a Jersey company, whether they are beneficial owners and accept their responses. The only proportionate way of ascertaining as a matter of reliable fact whether they are beneficial owners (as opposed to just relying on what they might care to volunteer) may well be by requesting that information from the Jersey company (and the Jersey company registry) in Jersey where that information is actually held.

158. Another useful conclusion reached by the Jersey courts concerning conflicting statements between the requesting authority and the information holder relates to the extent of the obligation of the JCA to check the statements made by the requesting authority. In their judgments, the Royal Court and Court of Appeal state that “where the JCA is faced with conflicting assertions as between the requesting authority and those affected by the request, it is not for him to reach any final conclusion on where the truth lies: his role is not to act as final adjudicator”. They held that although it was necessary for the Jersey competent authority to rationally consider the totality of the evidence made available to him in an EOI request (and seek further clarification where necessary), the information provided need not be verified by affidavit and specific evidence need not be produced to support facts alleged. The JCA “is at liberty to ask the requesting state authorities for

clarification or further information but is under no obligation to do so; nor is he under any obligation to require the production of evidence in support of facts of which he is informed in order to verify them for himself”. Where there is a dispute between the requesting authority and the person concerned, the Jersey Competent Authority need not judge the issues in dispute or decide whether it was more likely or not there had been non-compliance with the relevant foreign revenue law. He must simply decide whether he has “reasonable grounds” for his belief based upon the material available to him. This interpretation was both confirmed on appeal and reinforced in the unrelated APEF and Fladgate cases.

159. The JCA affirmed that as a result of the Volaw ruling, once he has decided on the foreseeable relevance of a request, he will no longer question the requesting authority when conflicting assertions are made by the requesting competent authority and information holder. This has materialised in one case, for which the JCA dismissed the challenge and reiterated his demand for information to the information holder. The Jersey authorities indicated that there is no mention of “reasonableness” in any notice issued since the adoption of the 2013 Regulations.

160. The objections made, and the time devoted by the JCA to answer each of these, delayed the EOI process in practice. The JCA admitted that the numerous objections and challenges to notices issued have required significant time and effort to overcome. For instance, in one case, the request dated from November 2010 and was answered only in July 2011 because of what is considered by the requesting jurisdiction as obstruction from the information holder – all the information initially requested was provided within a month after the clarifications were provided.

161. The JCA expects the publication of the court decisions in the Volaw case and the amendments to the EOI Regulations will diminish the number of objections by raising the service providers’ awareness on the obligations of the JCA and their own obligations. It is also expected that the JCA will take a stronger role in gathering information (see below section B.1.4 on Enforcement). These developments also provide more clarity to service providers, and more legal security when answering the JCA notices.

162. A recent development (post-onsite visit) should also assist the JCA in this matter. For the first time in March 2014 the Royal Court took a decision on an EOI case based on the TIEA Regulations as amended in 2013. As further explained under part B.2 below, grounds for judicial review are illegality, irrationality, and procedural impropriety. Reasonableness in the original Regulations is replaced with irrationality, which means that “the decision must be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to

be decided could have arrived at”.⁹ In the Fladgate case, the court considered that the JCA had made a rational assessment of the material before him before deciding whether or not to respond to the request.

iii) A lack of pro-activeness in opening alternative lines of investigation in difficult cases

163. In general, information requested was received from the information holders and exchanged in a timely manner. In practice, some service providers failed to provide the requested information in a number of cases, claiming that they were not keeping the required information or refusing to provide it, as noted under point ii) above.

164. In four of these cases, some of the requested information proved to be available in more than one place in Jersey. The JCA requested information from the person suggested in the EOI request, and maintained this line of investigation, even where it proved deficient and an alternative line of investigation was available. Towards the end of the period under review, the JCA has pursued alternative lines of investigations when facing difficulties especially when some of the missing information is easily accessible from the JFSC Company Registry.

165. In one case in 2010 already described above in sections A1 and A2 of the report, the service provider declared that it was providing only a registered address service and was not in possession of the information required by the JCA. It is unclear why the matter was not pursued further since the information should have been kept at the registered office, and it is also unclear why the JCA did not open an alternative line of investigation to the JFSC Companies Registry, rather than proposing that the requesting authority send an EOI request to the jurisdiction where the entity was managed and controlled. The file of the case does not provide explanations and the JCA affirmed that they would act differently today.

166. Similarly, in another case, the former trustee of a trust for which information was required informed the JCA that he had sold his client base to another trust company and ceased his own trust company five years before the request was made. He nonetheless indicated that to his knowledge the person concerned was not linked to the particular trust named, but later indicated the contrary. The JCA nonetheless continued to correspond with this person rather than the successor trustee, reiterating his requests for written information. Ultimately, the JCA determined that the service provider was

9. Para. 21 and 58 of Fladgate judgement, citing the standard of “Wednesbury unreasonableness” from *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223.

giving confusing, misleading and false information, and it was only when the service provider seemed to have left the island two years later that the JCA opened a second line of investigation with the successor trustee, and obtained the missing trust deed within a couple of days. Had the JCA opened the alternative line of investigation as soon as it became apparent that the first service provider was not reliable, the response time would have been much shorter.

167. The current Jersey competent authority admits that these few cases where the information holder refused to provide the information should have been handled in a more effective way, but no in depth discussion was possible as most of the cases had been handled by the previous person in charge who has passed away. The competent authority affirmed that should the same cases arise now, they would be handled differently. It is now common practice for the JCA to request information from the JFSC when the information holder does not diligently provide information otherwise available with the JFSC either because he/she claims the information is not available or because he/she refuses to provide it (mainly ownership information).

168. The JCA and JFSC also recently started discussing how to better cooperate to ensure a more efficient exchange of information (e.g. how best to draft the notices and on the range of information available with the Registrar). This initiative is highly encouraged.

Conclusion

169. In conclusion, the gathering of information for EOI purposes was performed effectively and exchanged in most cases, where information requested was received from the information holders and exchanged in a timely manner. Whereas some issues arose in the period 2010-12, mainly in relation to the interpretation and implementation of the EOI Regulations, the Jersey authorities acted proactively and took actions to address these issues.

170. As a result, the legal and regulatory framework is now fully “in place”. However, most of these actions were taken at the end or after the period under review and a full assessment of the impact of the actions taken is therefore not possible at this stage. Recommendations therefore are made to Jersey to monitor the implementation of the amended EOI Regulations to ensure that they allow for an efficient gathering of information, and to continue pursuing alternative lines of investigations, where necessary.

Enforcement provisions to compel production and access to information (ToR B.1.4)

171. Where a person does not comply with a request by Jersey’s competent authority to provide information, Jersey’s authorities may apply for a

court order or for a search and seizure warrant and/or impose penalties, to compel the production of information. Changes have been introduced in relation to all three forms of powers by the 2012, 2013 and 2014 amendments as described below. None of the powers were exercised during the period under review, but in one instance the JCA has passed a file to the Attorney General to ascertain whether criminal proceedings may be taken against a third party who supplied false or misleading information to the JCA.

Court Orders

172. Previously, the court order power for obtaining information from a third party could only be exercised where the “serious prejudice” threshold was met (see *Requesting information from third persons: procedural changes* above). Under the 2012 revised reg.8 of the EOI Regulations, this threshold has been removed and the court order power can be exercised so long as the third party has not complied with the information notice, or there are reasonable grounds for suspecting that s/he will not comply with it.

173. Furthermore, when Jersey’s competent authority applies for a court order for the provision of the tax information, the concerned person is generally entitled to 14 days’ notice of the application to provide him/her the opportunity to be heard at the hearing of the application for the court order (reg.10). Previously, this notice was dispensable only if the Court was satisfied that this would “seriously prejudice the investigation of a relevant criminal offence”. A further exception from notification is now added by the 2012 Amendments: notice is not required to be given if the Court is satisfied “that there is a serious risk that the tax information sought will be altered, concealed, destroyed or otherwise disposed of” if notice was provided or if this could prejudice the investigation (reg.10). This additional ground further strengthens the enforcement powers available to the Jersey authorities to ensure that information can be obtained for effective EOI.

174. The amended procedure applied to TIEA requests only for a short period however (October 2012-November 2013), given that the court order power is removed by the 2013 amendments to the TIEA Regulations. It remained in place for EOI requests based on the USA Regulations and the DTA Regulations until these regulations were amended in April 2014.

Search and seizure

175. The conditions for the exercise of search and seizure powers have also been modified by the 2012 amendments. Most importantly, a search and seizure warrant that is issued by the Bailiff because it is reasonably believed that the use of the notice procedure to obtain the information might seriously prejudice a tax investigation (“ground 1”) would no longer authorise

the warrant holder to enter any part of premises that is occupied as dwelling. However, the power to search such premises still existed if the warrant was issued on the basis that an offence under the EOI Regulations had been or was about to be committed in the premises (“ground 2”); an application for a warrant on the basis of ground 2 had to be made by a police officer. The consent of the Attorney General was necessary to apply for a warrant from the Bailiff.

176. The 2013 and 2014 amendments further modified the procedure for search and seizure under the EOI Regulations. First, dwellings come back in the ambit of the premises that can be searched for EOI purposes, as it seemed too easy to hide documents in dwellings. Second, the grounds for applying for a search warrant are broadened and now also include the failure of the taxpayer or third party to provide information to the competent authority under regulations 2 or 3 (informal request or formal notice), or their expected failure based on reasonable grounds. This amendment answers the procedural concern expressed in the 2011 Report about the threshold of “serious prejudice” to a tax investigation. The 2013 and 2014 amendments also specify the operation of a search of computer devices. In addition, an anti-tipping off provision is inserted as a general rule, that prevents any person to disclose to the person concerned any information relating to the warrant or its execution. Disclosure is possible only with the written consent of the competent authority or of the Royal Court. Finally, a provision is added to specify the deadline for appealing the warrant to the court – 7 days from the execution of the warrant.

177. The 2013 and 2014 amendments significantly broaden the possibilities of search and seizure in cases where the information holder (taxpayer or third party) is uncooperative.

Sanctions for non-compliance

178. Finally, the range of offences under the EOI Regulations, and the severity of the punishments for such offences, have increased. In addition to the offences previously described in the 2011 Report, it is now an offence for an individual to knowingly or recklessly make a statement or deposition (or withhold information in a manner so as to make a statement) which is false, misleading or deceptive in a material manner.

179. All offences under the Regulations are now punishable by imprisonment of a term of 12 months and a fine (reg.15, as revised). The penalty, and amount of fine, applied in each case is determined by the Court dependent upon the seriousness of the offence. In the Magistrate Court, which hears most cases, fines cannot exceed GBP 5 000 (EUR 6 100 or USD 8 400). In the Royal Court, where the most serious cases are heard, there is no limit to the fine that can be applied.

The use of enforcement powers in practice

180. None of the enforcement powers were exercised during the period under review – the JCA did not apply for a court order or for a search warrant, and no penalties have been imposed for failure to provide information requested in a notice or for not respecting the deadline given in the JCA notice. The Jersey authorities explain that court orders and penalties are rarely applied in domestic cases either; search and seizure have never been used in domestic cases.

181. As an exception, in one instance, the JCA has transmitted a file to the Attorney General to ascertain whether criminal proceedings may be taken against a third party who supplied false or misleading information to the JCA (case described above of a former trustee under section B.1.1). The Attorney General has considered the matter, but as the main witness (the former JCA) has passed away, no action has been taken.

182. It seems that the lack of possibility to apply for a search warrant once a notice has already been issued prevented the efficient gathering of information, for instance in the cases where the information provided by the information holder was deficient or he declined to provide information. It was also not the policy of the competent authority to apply enforcement measures in an exchange of information context in 2010-11. Since 2012, the competent authority has not hesitated to invoke the use of court orders where necessary: In a couple of cases the JCA informed the record keeper of the intention to apply for a court order, at which point the record keeper supplied the information or information was otherwise gathered.

183. The JCA declared that with the latest amendments to the EOI Regulations, in cases of false statements or refusals, he would apply to the Bailiff for the issuance of a warrant for search of the record keeper's premises and seizure of anything pertaining to the information required.

184. The Jersey authorities are encouraged to make use of the full range of powers available to the competent authority, where relevant. Now that the powers of the competent authority have been clarified, these should be enforced where necessary to answer an EOI request, to ensure an effective exchange of information.

Secrecy provisions (ToR B.1.5)

185. Article 4 of the Taxation (Implementation) (Jersey) Law provides that no restriction on the disclosure of information imposed by any enactment or otherwise prevents the disclosure of information to a requesting competent authority pursuant to an EOI instrument. Bank secrecy is therefore not opposable to EOI. The only secrets opposable to EOI are the ones listed in the treaties, including the attorney-client privilege, as defined by Jersey's common law.

Attorney client privilege

186. The 2012 amendments introduce in the EOI Regulations an express statement that a person is not required to provide to the JCA any information which is subject to legal professional privilege (reg.10A(1)). This new provision does not impact the JCA's power to access information for EOI; it merely transcribes the TIEA provisions into the regulations.

187. In respect of any other types of secrecy provisions (whether set out in contract or by legislation), the revised EOI Regulations (reg.10A(3)) now expressly provide protection against any civil or criminal liability for the disclosure by any third person of information to the JCA either as a result of the notice procedure (reg.3) or court order procedure (reg.8 of the USA and DTA Regulations). This provision confirms that service providers, when answering the JCA notice, do not breach any confidentiality duty vis-à-vis their clients.

Access to information covered by a confidentiality duty

188. No service providers tried to claim secrecy duties to the JCA. Lawyers and law firms requested to provide information have also not raised any objections based on the attorney-client privilege. Private sector representatives confirmed that the attorney-client privilege could clearly not apply to EOI requests directed at a lawyer acting as service provider, who would for instance be required to hand over information gathered when performing customer due diligence checks.

189. Banking information was requested in practice. In 107 EOI cases there was at least one banking information question and the information was gathered and exchanged in a timely manner in most cases. When requested to provide banking information, the JCA usually directly requires the information from the compliance department of the concerned bank (when known). On a couple of occasions, information was requested from the taxpayer. No bank claimed that bank secrecy prevented them from providing information to the JCA, and none challenged the JCA notice. Requests for banking information often relate to individuals, and the link between a tax matter in the requesting jurisdiction and the banking information requested is clear. Banks most of the time provided the requested information within the given deadline and the Jersey authorities indicate that on rare occasions banks asked for a reasonable extension. It has not happened that the requesting jurisdiction did not provide the name of the person and bank concerned.

190. No issue arose in terms of gathering information, except where the information provided did not show whether the bank account was in Jersey or another jurisdiction sharing the same bank number codes, or where the notified taxpayer or service provider challenged the notice issued to a bank on foreseeable relevance basis (see above B.1.1).

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|--|
| The element is in place. | |
| Factors underlying recommendations | Recommendations |
| Jersey's domestic legislation which provides access powers to obtain information for exchange contains impediments which may significantly affect access to relevant information although to date they have not restricted access. | Jersey should amend its domestic legislation to remove the identified impediments to effective access to relevant information. |

| Phase 2 rating | |
|---|---|
| Largely compliant | |
| Factors underlying recommendations | Recommendations |
| <u>The drafting of access power provisions led to too many interpretation difficulties, objections from requested parties, and ultimately delays in the EOI process. The TIEA Regulations have been amended after the period under review to improve the efficiency of the gathering of information for EOI purposes.</u> | <u>The Jersey authorities should closely monitor the implementation of the amended EOI Regulations to ensure that they allow for an efficient gathering of information.</u> |
| <u>The process put in place to gather information has produced the expected results in most cases in practice. However, in cases where the information holder did not answer a notice, or has not done so diligently, the Jersey competent authority has not always pursued all alternative and readily available avenues to gather information, which led to a few delayed or unsuccessful exchanges. The Jersey competent authority started to more consistently make better use of all available sources of information in 2012.</u> | <u>The Jersey competent authority should continue pursuing alternative means of investigation, where information is readily available, when the first line of investigation proves unsatisfactory. Now that the powers of the competent authority have been clarified, these should be enforced where necessary to answer an EOI request, to ensure an effective exchange of information.</u> |

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

191. Rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

192. The 2011 Report noted a number of provisions which allowed the person who is the subject of a request to be notified of the existence of an EOI request, as well as exceptions to this right. The person was able to make an appeal against the third party notice (whether or not a notification was made), in addition to the appeal that the recipient of the notice was entitled to make. Notification and appeal rights had not impeded the competent authority's prompt access to, and exchange of, information in 2007-09.

193. The standard requires that notification procedures should also not be applied in a manner that, in the particular circumstances of a request, would frustrate the efforts of the requesting jurisdiction. However, it appears that some persons in Jersey made use of the possibilities to challenge and appeal against notices with a view to frustrate the exchange of information in the period 2010-12. The situation has changed with the increased volume of EOI requests received by Jersey and the change of personnel in the competent authority and practice concerning notifications. Twelve appeals have been made against the competent authority's notices by both the concerned persons notified and the third party information holders, in addition to objections made to informal and formal notices. Of these, seven have gone to Court and led to two judgements (one judgement covers six of the cases).

194. In practice the procedure of notification, coupled with the right of appeal, and most importantly the vague definition of the access powers led to delays in EOI that threaten the effectiveness and usefulness of the exchange process. Discussions between the JCA and a foreign competent authority also stressed some shortcomings of the Regulations.

195. The Jersey authorities have therefore amended the EOI regulations in 2012, and further amended the Regulations in 2013 and 2014 to put an end to the shortcomings which have been a particular and material factor in delaying the response to a few EOI requests. Further, the primary purpose of the 2013 amendments was to limit the statutory scope for appeal by redrafting

the provisions on access powers (see above Part B.1.1) and replacing the provisions on appeal rights with provisions on judicial review.

Taxpayer notification and anti-tipping off

196. At the time of the 2011 Report, it was observed that when the information requested in an EOI request was maintained by a third party, the Jersey competent authority as a general rule had to notify the taxpayer of the existence of the EOI request and of the notice issued to the third party and provide the taxpayer with a summary of reasons for the notice (reg.3).¹⁰

197. Some exceptions existed to the notification of the taxpayer, if the competent authority: suspects that the taxpayer committed a criminal offence; is satisfied that disclosure of information would prejudice the assessment or collection of tax; or if disclosure would identify a person having provided relevant information to the tax authorities. Exceptions were applied in all cases during the period 2007-11, and 16 notifications were made in 2012, after the change of competent authority in Jersey.

198. In practice, since the service provider is also informed of the EOI purpose of notices he/she receives, he/she could, prior to changes in the Regulations, tip off the taxpayer in respect of a civil tax matter (this would not be possible with a criminal tax matter because in these circumstances the service provider would be guilty of tipping off under the AML legislation). The only cases where the taxpayer was for sure not aware of the existence of an EOI request was when all the requested information was already available with the tax administration (e.g. UK requests for information already available with the Jersey tax authorities). The Jersey authorities have therefore amended the Regulations.

Amendments to the Notification procedure

199. Three major amendments have been made, concerning: unnamed taxpayers, the extension of the exception to notification, and the introduction of an anti-tipping off measure.

200. As discussed in part B.1 above, following the 2012 amendment of the EOI Regulations, the Jersey competent authority can now serve notices to obtain information from third parties even where the name of the taxpayer concerned by the request is not known (and cannot be provided in the notice). With the 2012 amendments, where a third party notice to obtain information is issued without the name of the taxpayer, the JCA must provide a copy of

10. A notification must also be sent to the person concerned with the EOI request when a search and seizure warrant is issued concerning a third party.

the third party notice and a summary of the reasons for the giving of the notice to the taxpayer “as soon as practicable”, after the information is provided by the third party (which identifies the person concerned; reg.3(4)&(5)). In all other cases, the notice must be provided to the person concerned “as soon as practicable” after the issuance of the third party notice – the previous regulations did not indicate when to notify the person.

201. Furthermore, where a third party notice is issued at a time when the taxpayer’s name is not known, the JCA can apply to the Bailiff for the taxpayer notification requirement (described above) to be waived on the basis that the JCA still does not know the taxpayer’s name and address and has taken all reasonable steps to ascertain this information. The other grounds mentioned above for waiving the notification requirement can also be relied upon by the JCA as grounds for a waiver application to the Bailiff (i.e. suspicion of offence, prejudice to taxation, and identification of the information provider). However, the third party will have a right to make representations to the Bailiff regarding the JCA’s application (reg.3(9)). This new procedure appears to be cumbersome, especially as the JCA needs to prove his diligence in identifying the taxpayer and as this can be contested by the third party.

202. The 2013 and 2014 amendments to the EOI Regulations further clarify that the competent authority for Jersey shall not be treated as knowing the name or address of the taxpayer by virtue of anything provided by the third party unless, upon providing the tax information, the third party expressly draws to the attention of the competent authority for Jersey the taxpayer’s name or address (reg.3(9)). This is crucial as, with the 2012 version of the EOI Regulations, the JCA might not have been able to review each and every paper to find the name and address of the taxpayer among sometimes dozens of boxes of documents. The latest amendments also clarify that the giving of the notification “as soon as practicable” means within 7 days.

203. Most importantly, the 2013 and 2014 amendments add that the exceptions to notification are triggered not only when the JCA considers that the conditions are met, but also when the requesting party has requested that the person concerned should not be informed of any matter relating to the EOI request, on the same grounds of prejudice to a tax assessment or investigation, etc., suspected offence, and protection of the identity of an information provider (reg.3(5)). The first trigger is also broadened to a potential prejudice to the tax actions mentioned in TIEAs: assessment, collection, recovery of taxes and investigation or prosecution of tax matters.

204. Finally, an anti-tipping off provision was introduced in October 2012 in the revised EOI Regulations, which can apply in two situations (reg.3(7)):

- (i) where the JCA does not provide taxpayer notification because any of

the grounds under which the JCA does not have to provide taxpayer notification applies; or

- (ii) where the JCA does not know the taxpayer's name and address at the time of giving the third party notice.

205. Under these circumstances, the JCA may state in the third party notice that the third party should not inform the taxpayer of the notice (reg.3(7)). A third party that knowingly and without reasonable excuse fails to comply with this requirement is guilty of an offence and is liable to imprisonment of 12 months and a fine (reg.15(3) &(5)).

206. The 2013 and 2014 amendments also clarify the anti-tipping off measures introduced in 2012 – the new regulation 3(6) requires that the ground for the prohibition to inform the concerned person be indicated to the third party. The third party cannot disclose the notice or any information relating to it to the taxpayer without the consent of the competent authority or the Royal Court. Finally, as for the exceptions to notification, the anti-tipping off provision is now triggered not only when the JCA considers that the conditions are met, but also when the requesting party has requested that the person concerned should not be informed, on the same grounds.

Notifications in practice

207. Up until the end of 2011, the Jersey competent authority considered in all cases that the exception to notification applied. The new delegated competent authority in 2012 applied the exception more conservatively, i.e. only in cases where the requesting jurisdiction asked for the exception to apply and notified the persons on 16 occasions. Notifications are couriered worldwide, as most persons concerned by EOI requests are not Jersey residents.

208. Jersey's authorities report that one treaty partner systematically asks the JCA to not notify the taxpayer, and the others do it frequently in criminal tax matters; the JCA conforms to these requests. In some cases, the JCA also asked the requesting authority whether the taxpayer could be notified, as it was unclear from the EOI request received or because the address of the taxpayer was not available with the Jersey authorities.

209. Before the October 2012 amendments, the notices issued to service providers did not inform them when the taxpayer was not notified and did not request them to not tip off the person concerned, and the JCA does not know whether in practice the service providers informed their clients or not of the existence of an EOI request. The JCA was nonetheless approached on a couple of occasions by service providers, when the person concerned had not been notified, asking permission of the JCA to inform their clients of the existence of the EOI request. The JCA denied the service provider the

authorisation to disclose this information, until permission would have been received from the requesting jurisdiction (the authorisation was provided in one of the two cases as the case was a long-running one). In another instance, the lawyer of a taxpayer that had not been notified by the JCA requested confirmation of the existence of the EOI request, and the JCA refused to answer the question.

210. It has occurred once prior to the 2013 amendments to the Regulations, when a requirement was imposed by the competent authority on a service provider not to inform the taxpayer concerned, that the restriction was lifted upon challenge in the context of a court case concerning the request, as it was evidenced that the taxpayer concerned was already aware of the EOI request.

211. In any event, the Regulations have been further amended after this case, in 2013 and 2014, and the refusal of the requesting authorities that the taxpayer concerned be informed is now part of the list of valid reasons to not do it, if based on one of the three triggers (criminal case, prejudice to the investigation, identification of information provider).

212. Jersey's authorities report that the anti-tipping off provision is now regularly used. In particular, it is always used when the taxpayer was not notified of the EOI request (under reg.3(6)) and when the requesting jurisdiction has specified that the taxpayer should not be informed of the EOI request. This amendment should ensure that the purpose of applying exceptions to the notification rules (e.g. in cases the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction) is not circumvented in practice.

213. The issue of notifications had been mentioned in Jersey court. In a recent court decision dated December 2013, the Royal Court questions the use of a "tick box" approach in the TIEA request template of Jersey. Whereas the court did not answer the question it raised (since parties did not raise arguments on the matter), it may be noted that the TIEA template request does not only ask the requesting authority to tick a box on whether the Jersey competent authority should refrain from notifying the taxpayer(s) involved, but also asks for the reasons for a positive response. As noted above, the subsequent 2013 and 2014 amendments add that the exceptions to notification are triggered not only when the JCA considers that the conditions are met, but also when the requesting party has requested that the person concerned should not be informed of any matter relating to the EOI request, on the same grounds of prejudice to a tax assessment or investigation, etc., suspected offence, and protection of the identity of an information provider (reg.3(5)). The Jersey authorities should report on any issue that may arise in future in their follow-up report.

214. The procedure of notification of the person concerned was criticised by two peers who contested the amount of information disclosed in the

notifications about the EOI requests. This is now addressed with the 2013 and 2014 amendments to the EOI Regulations that remove the obligations to submit a summary of reasons to the person concerned and to justify the reasonableness of the decision to gather information for EOI purposes (see also section C.3 below on Confidentiality).

215. For notification procedures to not have adverse effects on EOI and exceptions to apply meaningfully, a jurisdiction that under its domestic law is required to notify the person who provided the information and/or the taxpayer that an exchange of information is proposed should inform its treaty partners in writing that it has this requirement and what the consequences are for its obligations in relation to mutual assistance.

216. Jersey has sent its template request to all TIEA partners, that indicates the existence of the notification procedure applicable and provides the opportunity for the requesting jurisdiction to indicate and give reasons as to why it does not wish the taxpayer to be informed of the EOI request. The Jersey competent authority is invited to further inform its treaty partners (and not only TIEA partners) of the existence of the notification procedure in Jersey and of the amendments made to the procedure recently. The authorities indicate that they will update their website¹¹ to reflect the latest amendments to the Regulations, and will notify all treaty partners on 1 June 2014 or shortly thereafter, following the entry into force of the Multilateral Convention, in conjunction with the distribution of the request template.

217. In conclusion, the practice of the JCA over the three years under review, and in particular the practice of not notifying the person concerned when the requesting authority so requests, and of clarifying the matter when the letter is unclear on this aspect, appears to conform to the standard, but the JCA should inform all its treaty partners of recent changes in the procedure. The JCA indicates that TIEA partners have already been informed as they were sent an updated request template, reflecting recent legislative and case law changes, on 5 March 2014. The JCA adds that a new communication, containing a slightly modified template, will be sent during the first week of June 2014, following the entry into force of the Multilateral Convention, to all 60 jurisdictions with whom an EOI relationship is in force.

Right of appeal

218. At the time of the Combined review, the person concerned by an EOI request had the right to appeal to the Royal Court against the notice he/she had received as well as against the notice received by a third party. The third party also had the right to appeal against the notice he/she had

11. www.gov.je/TaxesMoney/InternationalTaxAgreements/Pages/default.aspx.

received. Appeals had a suspending effect, and the Royal Court decision (to confirm, vary or set aside the notice) could be appealed to the Appeal Court and in turn to the Privy Council, which is the ultimate recourse for all crown dependencies and overseas territories.

219. The 2012 amendments to the regulations on the third party notice and notification of the person concerned described above incidentally slightly limit the right of appeal, but in a way that should not have a noticeable impact in practice. Generally, the tax information obtained from the third party still cannot be passed to the requesting jurisdiction until the taxpayer has received a copy of the notice and the taxpayer's right of appeal against the notice has expired (i.e. after 21 days or such other time that the Royal Court may allow), or the appeal has been withdrawn or dismissed (reg.3(11) and reg.14). However, a taxpayer who has not received a notification no longer has a statutory right of appeal against the third party notice (reg.3(12)); this was previously possible for instance if the third party informed the taxpayer of the notice despite the absence of notification. If the taxpayer is not notified, the JCA will exchange the requested information as soon as received from the third party.

220. The 2013 amendments to the TIEA Regulations and 2014 amendments to the DTA Regulations should lead to more substantial changes in practice. First, the removal of the obligations for the competent authority to justify the reasonableness of his decision to use access powers and to attach a summary of reasons to the notification sent to the taxpayer contributes towards establishing the authority of the competent authority and reducing unnecessary delays.

221. Second, the 2013 and 2014 amendments limit the right of appeal of the taxpayer and information holder to an application for judicial review (reg.14) with a possibility of appeal directly to the Privy Council (reg.14A). As explained in the Volaw judgement, in a full appeal, "it is for the Court – standing in effect in the shoes of the JCA – to consider the matter afresh", whereas in a judicial review it is "for the appellants to show that the JCA erred on one or other of the more limited grounds available for review". In other words, the appellant will have to demonstrate that the Comptroller was acting illegally, irrationally, or under some procedural impropriety. The clarification on the scope of the discretion given to the JCA makes this a harder case to make. Incidentally, a judicial review, contrary to the appeal to the Royal Court, does not relieve the information holder from the obligation to provide the requested information to the JCA, even though the JCA remains prohibited to send this information to the requesting authorities, until the application is dismissed, withdrawn or discontinued (unless specifically authorised by the Court).

222. The Law Officers' Department explained that by limiting the scope of the appeal process, Jersey followed the same approach as the one chosen in extradition matters by other British jurisdictions: the EOI and extradition matters are similar in that the requested authority should not decide on the merits of the case but merely decide whether there is sufficient ground for accepting to provide assistance, which is an administrative decision, the substantial dispute being a matter for the requesting party. Some support is found in the Volaw judgement, where the Appeal Court considered that there was no need to hear experts or witnesses in an EOI case. Support is also provided in the 2014 Fladgate case, where the Royal Court clearly states that the JCA is not under a duty to hold an investigation being conducted by the requesting authorities or to hold a mini-trial to test the correctness of the statements made to him.

223. Regulation 14 as amended frames the ability to apply for judicial review: it limits the time during which an application can be made to 14 days of receipt of a notice, or 14 days after the copy of a notice to a third party was given to the taxpayer. The Law Officers' Department clarified that the JCA has the obligation to try to reach the taxpayer, but no obligation to succeed. The JCA will courier the letter when the name and address of the taxpayer is known and no exception to notification applies.

224. Regulation 14 also identifies a number of grounds on which the application for judicial review will not be accepted: the application of an exception to the notification right of the person concerned; the notification was provided without respecting the 7 day time-limit to do so; the application of the anti-tipping off measure; and the request by the JCA that documents be authenticated in a particular manner not mentioned in regulation 10B cannot be the object of a judicial review.

225. Most importantly, the decision on a judicial review is only appealable directly to the Privy Council in London (reg.14A), within 14 days of the Royal Court decision, and with the leave of the Privy Council. The Jersey authorities consider that the leave of the Privy Council will function as a filter and that only a very limited number of cases should be heard by the Council. On the other hand, if the leave is granted, the timeframe for the Privy Council to decide on the case is unpredictable.

226. The new procedure applies, in the framework of TIEAs, to current appeals for which no hearing has been set or for which the date of the hearing was set for after 4 December 2013 (i.e. 28 days after the entry into force of the amendments). It applies, in the framework of DTAs, and under the same conditions, after 28 April 2014.

227. Third, the 2012, 2013 and 2014 amendments also clarify the wording of regulations on the notices issued to the taxpayer or third parties (reg.2 and

3) to limit the elements that can be appealable, notably on the uncertainty/ambiguity on what is “reasonable” to request them to provide, as noted under section B.1.1. In addition, the Volaw case is based on the EOI Regulations as drafted in 2010, and the APEF judgment updates the interpretation of the Volaw case for the 2012 Regulations, but the Regulations, in their 2013 version, may still leave the way for further challenge on the interpretation of the EOI Regulations in future although the grounds for appeal are now limited to judicial review.

Appeals in practice

228. Of the 133 EOI requests received in 2010-12, 12 gave rise to an appeal. So far seven cases led to a judgement, and five appeals have been subsequently dropped or otherwise solved.

229. In the first case – known as the Volaw case – that reached court judgment, and judgment in the Court of Appeal, the two decisions went in favour of the JCA and exchange of information: in this case, the EOI request received in February 2010 is still not answered almost four years later despite the favourable decisions of the Royal Court and of the Court of Appeal in 2013. Despite the fact that the first court decision is not yet definitive, since it remains appealable to the Privy Council, the outcome has already had some positive effects in practice, with at least one other appeal having been withdrawn after the JCA contacted the law firm, making reference to the Volaw case. The 2013 amendments to the TIEA Regulations (and 2014 amendments to the DTA Regulations) are also based partly on the conclusions of the court.

230. In the second case related to six linked EOI requests in respect of one taxpayer, the information holders appealed the notice for production of information issued under the 2012 version of the Regulations, based on domestic law and the TIEA: one main ground was that the competent authority had no reasonable ground for believing that the taxpayer had failed to comply with foreign tax laws and for believing that any of the documents required were relevant to the tax liability of that person. The appellant also considered that the notice issued was too wide. Another ground was that the request did not comply with the terms of the TIEA in that the information requested was not foreseeably relevant and that it did not comply with Article 5(5) in that it was not “formulated with the greatest detail possible”. The Royal Court built its decision on the precedent in the Volaw case and considered that on the basis of the information available to the Jersey competent authority at the time the request was received, there was reasonable reasons to believe that the request was valid and to issue the notice. On the other hand, the court considered new evidence provided by the appellant to consider that in this particular case the information requested was not foreseeably relevant, while noting that it is

perhaps unfortunate that the appellant did not provide similar details to the Jersey competent authority as to the court.

231. In another case, an appeal was made against the JCA notice for information, but a solution was found as new notices were issued to service providers and the JFSC after the concerned entity left Jersey, and the requested information was gathered and exchanged.

232. In one case, the taxpayer settled the matter in the requesting jurisdiction and thereafter withdrew the appeal in Jersey. In another case the taxpayer lodged an appeal but dropped it a year later as the appeal was without merit, thus delaying the EOI process without sound reasons.

233. In terms of timeliness, whilst the Volaw case that has been brought against the Jersey competent authority has already taken more than four years, Jersey's authorities advise that it is not typical in terms of the complexity of the issues involved in that case. In general, the time taken to process an appeal will depend upon the complexity of the case.

234. The Jersey authorities consider that the newly introduced judicial review procedure should speed up the process and reduce response time by six to twelve months compared to the previous procedure. Setting a date for the hearing would be easier since no witnesses are heard (and therefore the burden of ensuring their availability and transportation is avoided). In addition, there is only one level of appeal instead of two, since the Court of Appeal is no longer involved. The first case of judicial review took place related to an EOI request received after that period, and the decision was taken four months after the second appeal was made, and the court declined to grant leave.

Conclusion

235. The replacement of the right of appeal by a right to a judicial review, added to the limitations to the notification coupled with anti-tipping off safeguards, and to the rewording of the access powers in a more straight forward manner, should generally assist reducing response time to EOI requests, while respecting the rights of the persons involved. The new procedure should also limit the number of frivolous appeals, by limiting the permissible grounds for a judicial review.

236. Several participants in the onsite visit indicated that the Jersey society is litigious by tradition, and even more so in the EOI context as appellants did not seem to fear any adversarial consequences in lodging frivolous appeals. The authorities should therefore consider engaging in a constructive dialogue with the finance industry of the island to explain the functioning of the new procedures, including the protection in the Regulations for service

providers against clients claims when a service provider answers a notice from the JCA, with a view to avoid unnecessary challenges and delays from service providers that so far might have been afraid of being sued by their clients. Most litigations have in practice been channelled through a handful of law firms. It appears however that most of the industry has already taken note of the Volaw decisions and the representatives of the private sector met during the onsite visit indicated that they would no longer expect the JCA to justify its notices, but simply to clearly indicate which information is requested.

237. A number of elements of the first judgement in the Volaw case should assist the JCA in his work and address the noted shortcomings, and are also directly reflected in the amendments made to the EOI Regulations.

Determination and factors underlying recommendations

| Phase 1 determination | |
|--|--|
| The element is in place. | |
| Phase 2 rating | |
| Largely compliant. | |
| Factors underlying recommendations | Recommendations |
| Jersey amended a number of <u>provisions in the EOI Regulations (on limiting appeals to judicial reviews, and limitations on notifications coupled with anti-tipping off rules) to ensure that</u> rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction are compatible with effective exchange of information. | The Jersey authorities should <u>monitor the effectiveness of the new Regulations to ensure that they provide for effective EOI.</u> |

C. Exchanging Information

Overview

238. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Jersey, the legal authority to exchange information is derived from bilateral mechanisms – double taxation agreements (DTAs) and tax information exchange agreements (TIEAs) – and domestic law. This section of the report examines whether Jersey has a network of information exchange arrangements that allow it to achieve the effective exchange of information in practice.

239. The 2011 Report found elements C.2 (network of exchange of information mechanisms), C.3 (confidentiality), C.4 (rights and safeguards of taxpayers and third parties) and C.5 (timeliness of responses to requests for information) to be “in place”. These elements have been rated “Compliant”. Element C.1 (exchange of information mechanisms) was found to be “in place, but certain aspects of the legal implementation of the element need improvement”, as the DTA with Guernsey only provided for the exchange of information which was available to the competent authorities under their respective income tax laws. The 2011 Report also raised a practical implementation (Phase 2) concern under element C.1 that provisions in some of Jersey’s EOI agreements and Jersey’s interpretation of these provisions may limit the effectiveness of information exchange. As a consequence, element C.1 was rated “Largely compliant”.

240. Since the 2011 Report, Jersey has entered into an additional 7 DTAs (which include a new DTA with Guernsey) and 17 TIEAs. Most importantly, the Multilateral Convention on Mutual Administrative Assistance was extended to Jersey in 2014. In all, Jersey has 80 EOI relationships, of which 35 are in force to date and 60 will be in effect with the entry into force of the Multilateral Convention on 1 June 2014. The new DTA with Guernsey allows for exchange of information to the standard and accordingly, the Phase 1 recommendation that was included in the 2011 Report under element C.1 is removed. The rest of the new EOI agreements entered into by Jersey also allow for exchange of information to the standard. As a result, element C.1 is upgraded to “in place”.

241. The 2011 Report noted that a difference of views emerged in practice between a peer and Jersey regarding at which point in a criminal investigation, information can be requested by an EOI partner in relation to a criminal tax matter. No peer has indicated that this issue has recurred during the course of this review. Accordingly, the Phase 2 recommendation that was included in the 2011 Report under element C.1 is removed.

242. However, some new concerns emerged in practice during the period 2010-12, notably on a number of clarifications sought by Jersey. The amendments made to access powers in the EOI Regulations may greatly diminish the number of requests for clarification. The Jersey authorities have also made significant efforts to enhance their relationship with EOI partners where difficulties were faced, and create good working relationships. It is nonetheless recommended that Jersey continue improving its exchange process towards limiting requests for clarifications to what is strictly necessary pursuant to the standard of foreseeable relevance, e.g. where the content or object of the request is unclear. Element C.1 remains rated “Largely compliant”.

243. The confidentiality of information exchanged with Jersey is protected by obligations imposed under the EOI instruments, as well as in its domestic legislation (oath of secrecy), and is supported by sanctions for non-compliance. However the competent authority has on occasions disclosed to third parties more than what is expected under the international standards. The Jersey authorities recognise that the Regulations were out of step with the international standards, and the Regulations were changed accordingly. The competent authority now needs to disclose less information.

244. The restrictions to exchange certain types of information in accordance with the international standards, such as business or professional secrets, or information the subject of attorney-client privilege, or where the disclosure of the information requested would be contrary to public policy, are also incorporated in domestic law as well as in Jersey’s EOI instruments. No issues related to these matters have been raised in practice.

245. During the three year period under review (1 January 2010-31 December 2012), Jersey received 133 requests for information from 16 different jurisdictions, with a clear increase compared with the previous period under review (a total of 36 requests in the three years period 2007-09), with 45 requests in 2010, 36 in 2011, and 52 in 2012. Sweden is the most significant EOI partner by volume, being responsible for one third of all of Jersey’s TIEA requests. Jersey also received significant numbers of TIEA requests from France, the Netherlands and Norway in the three year period under review. The UK is the only significant EOI partner making requests to Jersey under a DTA.

246. The statistics provided by Jersey show that Jersey responded to information exchange requests to a large degree in a timely manner, with 74% of the requests being answered within a period of 180 days.

247. The Jersey competent authority acknowledges receipt of requests and keeps requesting authorities abreast of the status of their requests.

248. Jersey sought clarifications of requests in a relatively high number of cases before processing them (43%), sometimes due to a very cautious interpretation of foreseeable relevance, in anticipation of the challenges that might arise. This led to a lengthy procedure in a number of cases. On the other hand, quite a number of peers noted a good and co-operative relationship with the Jersey competent authority and efficient exchanges of information in practice.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

249. The 2011 Report found that element C.1 was “in place, but certain aspects of the legal implementation of the element need improvement”. The 2011 Report found that the DTA between Jersey and Guernsey only provided for the exchange of information which is available to the competent authorities under their respective income tax laws. Therefore, Jersey was recommended to work with Guernsey to ensure that it has in place an agreement which includes an exchange of information provision in line with the international standard.

250. Since the 2011 Report, Jersey has signed a new DTA with Guernsey which allows the parties to exchange information in line with the international standard. Accordingly, the Phase 1 recommendation from the 2011 Report is removed and element C.1 is upgraded to “in place”.

251. Since the 2011 Report, Jersey has entered into an additional 7 DTAs (which include the new DTA with Guernsey) and 17 TIEAs. The recent territorial extension by the United Kingdom of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters to Jersey brings the total number of EOI relationship of Jersey to 80. Of these, 35 are in force and 60 will be in force when the Multilateral Convention will enter into force in Jersey on 1 June 2014.

252. The 2011 Report also made a Phase 2 recommendation with regard to the interpretation of certain provisions in Jersey’s EOI agreements so that they do not impede the effective exchange of information to the international standard and are in line with the intention of the contracting parties. This arose from a difference in interpretation between Jersey and an EOI partner

as to when an issue constitutes a “criminal tax matter”, as well as the interpretation of a provision included in the TIEA which varied from the OECD Model. These issues have been addressed in the period 2010-12. As a consequence, the Phase 2 recommendation that was included in the 2011 Report under element C.1 is removed.

Other forms of information exchange

253. In addition to exchanging information on request, Jersey has agreed to implement measures equivalent to those contained in the EU Directive on the Taxation of Savings Income (2003/48/EC). As a result, Jersey has entered into reciprocal bilateral agreements with each EU Member State. Those agreements provide for (i) a withholding tax to be levied in respect of interests and similar payments made to residents of EU Member States or (ii) information to be exchanged automatically where the taxpayer has made a voluntary disclosure. Every year, Jersey financial institutions are required either to apply and levy a specific withholding tax, or to submit details of Jersey savings income of residents of EU member States to the Jersey Taxes Office, which passes the tax retained and information disclosed to the appropriate member States by 30 June of each year. The Jersey Assembly adopted in January 2014 regulations abolishing the retention tax from 1 January 2015, which would be replaced with full automatic disclosure of savings income.

254. Prospectively, Jersey has signed a FATCA-style agreement with the United Kingdom in October 2013, and signed a FATCA inter-governmental agreement with the United States in December 2013. Jersey has also committed to participate in the G5 pilot project on automatic exchange of information, the Early Adopters Group, a group of jurisdictions committing to the early implementation of the Common Reporting Standard on automatic exchange of information (as indicated in the statement issued on 19 March 2014).

255. Jersey occasionally exchanges information spontaneously with the UK under the DTA.

256. Finally, the Jersey authorities have on one occasion when requested allowed representatives of a TIEA partner to enter Jersey to interview individuals and examine records.

Foreseeably relevant standard (ToR C.1.1)

EOI instruments

257. The international standard for EOI envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow “fishing expeditions,” i.e. speculative requests for information that have no

apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 1 of the Model TIEA and Article 26 of the Model DTC, as set out below:

“The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.”

258. All seven DTAs entered into by Jersey following the 2011 Report with Estonia; Guernsey; Hong Kong, China; Isle of Man; Luxembourg; Qatar and Singapore contain a provision patterned upon Article 26 of the Model Tax Convention and therefore meet the “foreseeably relevant” standard. In particular, the revised DTA with Guernsey enables Guernsey and Jersey to exchange information to the international standard, and exchange is no longer restricted to only information that is available under the jurisdiction’s own income tax law. The Multilateral Convention similarly use the term “foreseeably relevant”.

259. In 14 of the 18 new TIEAs¹² entered into by Jersey, a provision is included which varies from the Model TIEA, and provides that:

“The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.”

260. This provision was also noted in the 2011 Report in relation to Jersey’s existing EOI agreements at that time. The above represents an important variation on the statement required by Article 5(5)(g) of the Model TIEA, which refers to “all means available in its own territory”. The wording

12. Argentina, Austria, Brazil, Canada, the Czech Republic, India, Indonesia, Italy, Japan, Latvia, Mexico, Poland, South Africa, Turkey

in Jersey’s agreements could capture other means including EOI agreements with other jurisdictions. That is, it may have the effect that until a requesting party has sought the information from its other relevant EOI partners, it would not be able to make an EOI request to Jersey. The 2011 report noted that Jersey advised that it does not intend to interpret the words in this way. The Jersey authorities reiterate their statement that the TIEAs are interpreted in conformity with the standard. They explain having kept the same wording as in previous TIEAs to not create confusion on the possible interpretation of varying provisions, but the last four TIEAs signed reintroduce the words “in its own territory”. In practice Jersey’s template TIEA request follows the wording of the Model TIEA, and makes reference to the means available in the requesting jurisdiction’s territory. The JCA has never insisted that information be sought from other jurisdictions first.

261. In all other regards, the TIEAs concluded by Jersey meet the “foreseeably relevant” standard.

Jersey template request

262. In practice Jersey invites all its TIEA partners to use its model template when making a request. The template requires, in conformity with Article 5(5) of the Model TIEA, that the requesting jurisdiction provides certain information to demonstrate the foreseeable relevance of the information requested: the identity of the person under examination or investigation and of the person believed to be in possession or control of the information; a statement of the information or documents sought, including the format in which to provide it; the tax purpose for the request; grounds to believe that the information is available in Jersey; a statement on confidentiality; a statement of conformity with the laws of the applicant party; a statement that information would be obtainable under the laws of the applicant party and the normal course of its administrative practice in similar circumstances; and a statement on measures pursued domestically.

263. Further, the Jersey template for TIEA requests asks the requesting party to provide the name and address of the taxpayer and the name and address of the holder of information. In practice, Jersey accepts less precise elements, and does not insist on a name and address, but is satisfied if the taxpayer/information holder can be identified.

264. The template also requests from the applicant jurisdiction that it provides the reasons why the information requested is considered to be foreseeably relevant to the tax administration and enforcement within its territory, with respect to the person identified, together with relevant details.

265. Practice shows that the use of a standardised template – like the Jersey or OECD model templates – enables information to be exchanged in

general more efficiently, as requests so made tend to be more complete, in terms of taxable periods, and statements of Article 5(5) of the Model TIEA (see also below *Clarification issues*).

266. The Jersey Competent Authority encourages the use of the template and considers that proper completion in full of the Jersey template should ensure that all information required for a valid request is provided. However in practice not all EOI partners have used Jersey's template. Some peers noted that, considering the breadth of their EOI network, they cannot use the specific template of each and every individual EOI partner. Whether or not the Jersey template is used, the request is thoroughly reviewed to ensure that all information has been supplied and all statements have been made in satisfaction of the requirements of the TIEA, to demonstrate the foreseeable relevance of the information requested (corresponding with Article 5.5 of the Model TIEA).

267. In cases where Jersey has received wholly invalid requests, e.g. those made before the entry into force of the TIEA or requests made by parties other than the official competent authority, the Jersey competent authority contacted the competent authority of the requesting jurisdiction to suggest how the request may be resubmitted in a valid form.

268. Jersey states it has never formally declined a valid request. However, in cases where a request is unclear or incomplete, the Jersey competent authority seeks clarifying or additional information from the requesting jurisdiction for the request to proceed.

Clarification issues

269. In cases where Jersey is of the view that a request is unclear or incomplete, the Jersey competent authority seeks clarifying or additional information from the requesting jurisdiction for the request to proceed. Jersey has sought clarifications from the requesting party in 57 out of 133 EOI requests received (43%) in the period under review. Some requests involved more than one issue for clarification.

270. Some of the clarifications sought are considered as in line with the standard, notably:

- In 23 instances, mandatory statements were not provided (e.g. reciprocity or conformity with the law of the requesting jurisdiction; naming the specific tax or taxes pursuant to the TIEA) – these requests for clarification should diminish because of improved communication between the competent authorities concerned; some EOI partners also now use either Jersey's or the OECD template of request which include all the mandatory statements to tick;

- In 15 instances, there was some doubt over the accuracy, completeness or veracity of the information provided in the request – for example the spelling of a taxpayer’s name; a full name or nature of a body corporate;
- In 8 instances, the requesting party did not specify whether the request was civil or criminal, or the period of the review was not stated – these requests for clarification were required because Jersey’s TIEAs generally enter into effect on different dates for civil and criminal tax matters; the number of such cases should diminish over time;
- In 7 instances, the requesting party did not provide an indication as to whether they requested non-disclosure to the taxpayer under investigation – these requests for clarification were required because Jersey’s domestic Regulations required taxpayer notification unless expressly otherwise requested;
- In 5 instances, the Jersey competent authority requested some confirmation (rather than clarification) from the requesting authorities, notably when the requesting Party requested information it believed to be in Jersey, but which upon review appeared not to be held in Jersey.

271. In the following instances it is considered that the clarifications sought may not have been necessary to gather the information requested: In 8 instances, the JCA sought clarification of the requesting jurisdiction’s tax law to better understand the background of the request, or to understand whether the request was foreseeably relevant – for example there was concern that if a company was not deemed to be resident in the requesting country, by reason of management and control, the information sought would not be foreseeably relevant. However, the tax residency of the person concerned should not be an issue since the EOI provision applies whether or not the person concerned is a resident of the requesting jurisdiction for tax purposes. Jersey courts also clearly established that it is not part of the functions of the JCA to resolve issues of foreign law (see part B.1 above).

272. Also, in 6 instances Jersey considered that the specific information requested was unclear, or too wide and thus potentially giving rise to an appeal; in these cases it is difficult to draw a line between necessary clarifications and those made out of extra precaution related to the appeal culture together with the definition of access powers in the EOI Regulations as described under Part B.1 above.

273. Finally, in 3 instances, the requesting Party made statements in the request, the veracity of which were challenged by lawyers acting for the Jersey entities – the JCA sought further information to substantiate those statements, which were all confirmed by the requesting authorities. Again, Jersey courts consider that it is not the JCA’s role to act as final adjudicator

between conflicting assertions between the requesting authority and the persons affected by the request (see section B.1 above).

274. Whereas requests for clarifications have not led to the refusal of exchanging information, it led to some delays, in most instances of a couple of months, but in a few instances it led to significant delays up to more than one year. Delays occurred especially when clarifications were coupled with numerous objections from the information holder, or when the requesting jurisdiction did not appreciate the importance of the clarifications requested and did not answer these quickly.

275. The Jersey authorities acknowledge the situation but consider that the clarifications were necessary on the basis of the appeal culture engendered by (or at least not discouraged by) the terms of the TIEAs, and Jersey's Regulations effectively made it so. A peer noted that it has happened that Jersey requested clarifications on the basis of objections – that the peer sometimes considered as absurd – raised by the service provider. However, that peer has always understood those requests for clarifications were made by Jersey to effectively and successfully argue against the objections in a way that could not lead to perception of partiality.

276. The 2012, 2013 and 2014 amendments to access powers, together with guidance now established in case law, allow Jersey's competent authority to adopt a line more in keeping with the international standards. In particular, the judgment in the Volaw case provides useful guidance: The court clarified that there is no obligation to seek clarification from the requesting authority in cases where the operation of the requesting jurisdiction's tax laws are in question or where there are conflicts in statements of fact between the requesting authority and the record holder. In addition, for the purposes of deciding whether to act on a request the competent authority is at liberty to ask the requesting authorities for clarification or further information but he is under no obligation to do so; nor is he under any obligation to require the production of evidence in support of facts of which he is informed in order to verify them for himself. The recent APEF decision and Fladgate decision reiterate the above guidance from the Court of Appeal in the Volaw case.

277. The Jersey authorities have also made significant efforts to make their position clear to EOI partners, and create good working relationships, especially since summer 2013. As a consequence, the situation should continue to be monitored and the Jersey authorities should continue to work closely with their EOI partners to further reduce the need for clarification. The JCA indicates that after the entry into force of the Multilateral Convention, a slightly revised EOI template will be issued and circulated to all 60 jurisdictions with whom an EOI relationship is in force. The template will allow reference to whichever EOI instrument is applicable, TIEA, DTA or the Multilateral Convention, so that a single model can be used by all EOI partners.

In respect of all persons (ToR C.1.2)

278. For EOI to be effective it is necessary that a jurisdiction's obligations to provide information are not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for EOI envisages that EOI mechanisms will provide for EOI in respect of all persons.

279. All of the TIEAs concluded by Jersey since the 2011 Report and the Multilateral Convention contain a provision concerning jurisdictional scope which is equivalent to Article 2 of the Model TIEA.

280. Article 26(1) of the Model Tax Convention indicates that "the exchange of information is not restricted by Article 1", which defines the scope of application of the Convention and indicates that it applies to persons who are residents of one or both of the Contracting States. All of the DTAs concluded by Jersey since the 2011 Report contain this language.

281. In practice, Jersey received EOI requests about persons and arrangements residents in the requesting jurisdictions for tax purposes, whether nationals or not of these jurisdictions.

Obligation to exchange all types of information (ToR C.1.3)

282. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the Model Tax Convention and the Model TIEA, which are primary authoritative sources of the standard, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to ownership interest.

283. None of the new EOI agreements of Jersey permit the requested jurisdiction to decline to supply the information requested solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. In practice, no difficulties have arisen with respect to this issue.

Absence of domestic tax interest (ToR C.1.4)

284. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A

refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

285. All of the new EOI agreements permit the information to be exchanged notwithstanding it may not be required for any Jersey domestic tax purpose.

286. In practice no issue has arisen concerning domestic tax interest.

Absence of dual criminality principles (ToR C.I.5)

287. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, EOI should not be constrained by the application of the dual criminality principle.

288. None of the new EOI instruments contains the principle of dual criminality for limiting the EOI, and the issue has never been raised in practice.

Exchange of information in both civil and criminal tax matters (ToR C.I.6)

289. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as “civil tax matters”).

290. All new EOI agreements provide for EOI in both civil and criminal matters.

In practice

291. In practice, Jersey received a large number of requests related to criminal tax matters in the period 2007-09. The number of these requests remains important, at around 25%, but diminishes, as explained below, as new taxable periods are open, and as the backlog of criminal cases in EOI partners reduces.

292. The effective date of Jersey’s TIEAs¹³ differs whether the EOI requests relate to a criminal or civil tax matter. TIEAs will generally have

13. With the exception of the TIEA with India which also provides for a retroactive effect with regard to civil tax matters.

effect for criminal tax matters from their date of entry into force, independently of whether the alleged offence was committed before or after the entry into force of the TIEA. On the other hand, in civil tax matters EOI is possible only in respect of a taxable period commencing after the entry into force of the TIEA.

293. The 2011 Report noted that an issue had been raised by one of Jersey's EOI partners concerning the distinction between criminal and civil tax matters, especially on whether prosecution must have been opened for the matter to be considered criminal. However, Jersey and input from the EOI partner involved indicate that this issue has now been resolved in accordance with the standard: a TIEA request will relate to a "criminal tax matter" for the purposes of the distinction between a criminal tax matter and other tax matters found in the entry into force Article of the TIEA if, at the time the applicant Party makes a request, the conduct to which such request relates is capable of leading to prosecution but it is not required that the matter has already moved to the stage of actual prosecution.

294. Further, Jersey's authorities have advised that they have exchanged information in both civil and criminal tax matters in practice and no difficulties have arisen with respect to this issue (except to the extent that in some cases it has been necessary to clarify with the requesting Party whether a case was criminal or civil in nature). Moreover, no peer has indicated that this issue has recurred during the course of this review. Furthermore, the Volaw case demonstrates that information regarding criminal tax matters, once provided, may also be used by the requesting jurisdiction for civil tax matters, even with regard to years prior to the entry into force of the TIEA.¹⁴ Accordingly, the Phase 2 recommendation that was included in the 2011 Report under element C.1 is removed.

Provide information in specific form requested (ToR C.1.7)

295. EOI mechanisms should allow for the provision of information in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under a jurisdiction's domestic laws and practices.

296. In some cases, a Contracting jurisdiction may need to receive information in a particular form to satisfy its evidentiary or other legal

14. The court determined that information obtained under an EOI request in relation to a criminal tax matter may (also) be used by the requesting jurisdiction for civil administration purposes, once the original (criminal) purpose of the request is satisfied. In its judgement of 28 November 2013 the Court of Appeal upheld this determination.

requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting jurisdictions should endeavour as far as possible to accommodate such requests. The requested jurisdiction may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

297. There are no restrictions in the post-2011 EOI agreements of Jersey that might prevent it from providing information in the form requested, as long as this is consistent with its administrative practices.

298. Furthermore, given the amendments to the EOI Regulations and the new definitions of “tax information”, as described in B.1 above, the concern in the 2011 Report that the JCA’s access is limited only to information in the form of a “document or record” where it is held by a person other than the subject taxpayer is now removed.

299. In practice, Jersey is prepared to provide information in the specific form requested to the extent permitted under its law and administrative practice, and no difficulties have arisen with respect to this issue. Where needed, Jersey provided information in a specific form such as authentic copies. Furthermore, as stated above, Jersey provided assistance to an EOI partner when it was necessary – as a part of the request for information – to interview employees on-site in Jersey. This peer highlights the co-operation provided by the Jersey competent authority in addressing the issues and finding the most appropriate moment for the interviews and the review of all the information requested.

In force (ToR C.1.8)

300. All but seven bilateral EOI agreements (with Belgium, Brazil, Hungary, Indonesia, Italy, Luxembourg, Slovenia and Switzerland) have been brought into force. Jersey has ratified these instruments, except the TIEA signed with Belgium in March 2014 (which is scheduled to be ratified on 3 June 2014), and awaits for its partners to do the same. Ratification is performed expeditiously in Jersey, usually in six weeks. The Multilateral Convention will enter into force in Jersey on 1 June 2014, which will bring 60 EOI relationship into force at that date.

In effect (ToR C.1.9)

301. The new EOI agreements entered into by Jersey since the 2011 Report are given effect in domestic law through the enactment of the Taxation (Implementation) (Jersey) Law 2004 and the EOI Regulations.

The information gathering powers under the DTA Regulations or the TIEA Regulations can be used for answering requests made under an EOI agreement that is included in the schedule to the regulations. Similarly, the Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014 contains a Schedule with the name of all Parties to the Multilateral Convention and date of entry into force of the instrument for each such Party.

302. In practice it has happened that the Jersey authorities did not amend the regulations in time and an answer to a request was (slightly) delayed. Jersey has changed the process, to avoid future issues. Amendments to the regulations are now sent to Parliament together with the newly signed EOI agreement. The parliamentary debates on the ratification of a new EOI instrument are immediately followed with the debates on the amendment to the Regulations to introduce reference to the new instrument in the schedule of the Regulations. The Parliament also accepted that the date of entry into force of the EOI instruments be inserted in the Regulations by government order, which avoids any delay. This also applies to the Regulations on the Multilateral Convention.

303. As discussed in B.1 above, the potentially restrictive provisions in the EOI Regulations that were noted in the 2011 Report have now been fully addressed.

Determination and factors underlying recommendations

| Phase 1 determination | |
|---|--|
| The element is in place, but certain aspects of the legal implementation of the element need improvement. | |
| Factors underlying recommendations | Recommendations |
| The DTC between Jersey and Guernsey only provides for the exchange of information which is available to the competent authorities under their respective income tax laws. | Jersey should work with Guernsey and ensure that it has in place an agreement which includes exchange of information provisions in line with the international standard. |

| Phase 2 rating | |
|--|---|
| Largely compliant | |
| Factors underlying recommendations | Recommendations |
| The highlighted provisions in some of Jersey's EOI agreements and Jersey's interpretation of those agreements, may limit the effectiveness of information exchange. | Jersey should continue to work with its EOI partners to ensure that the provisions highlighted and the interpretation of its EOI agreements do not impede the effective exchange of information to the international standard, in line with the intention of the contracting parties. |
| <u>In order to access information during the review period, Jersey had to seek clarifications in a number of cases, which delayed exchange of information. The amendments to the competent authority's access powers to address interpretation difficulties on the reasonableness of a notice for information, together with guidance provided by case law, should allow Jersey's competent authority to adopt a line more in keeping with the international standards. The Jersey authorities have also made significant efforts to enhance their relationship with some key EOI partners, and create good working relationships.</u> | <u>The Jersey authorities should continue their efforts towards limiting requests for clarifications to what is justified pursuant to the standard of foreseeable relevance.</u> |

C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

304. The most important contribution to the development of Jersey's EOI network of EOI instruments since the 2011 Report is the extension of the application of the Multilateral Convention to Jersey in 2014. In a letter dated 12 February 2014, the United Kingdom declared that its ratification of the Convention as amended by the Protocol is extended to the territory of the Bailiwick of Jersey. The Convention will enter into force for the territory of Jersey on 1 June 2014.

305. Since the 2011 Report, Jersey has also taken active steps to develop its network of EOI agreements by signing 7 DTAs¹⁵ and 17 TIEAs.¹⁶ All these new EOI agreements are in line with the standard. In total Jersey signed 42 TIEAs and DTAs (see Annex 2) and continues expanding its EOI network.

306. Jersey wrote to all OECD, G20 and EU jurisdictions, with which it did not already have a DTA or a TIEA, inviting those jurisdictions to enter into negotiations. Most jurisdictions answered the invitation and have or are negotiating EOI instruments with Jersey. Jersey also more recently proposed EOI instruments to further jurisdictions, where business opportunities are identified.

307. Jersey is currently negotiating EOI Agreements (either DTAs or TIEAs) with another 18 partners. Jersey advised that in six cases, the EOI Agreements are ready for signing whilst in the remaining cases, negotiations are in advanced stages.

308. Comments were sought from Global Forum members in the course of the preparation of this supplementary report, and no jurisdiction has advised that it was interested in entering into an EOI agreement with Jersey and that Jersey had refused to negotiate or conclude such an agreement with it.

Determination and factors underlying recommendations

| Phase 1 determination | |
|---|---|
| The element is in place. | |
| Factors underlying recommendations | Recommendations |
| | Jersey should continue to develop its EOI network with all relevant partners. |
| Phase 2 rating | |
| Compliant | |

15. Estonia; Hong Kong, China; Guernsey; Isle of Man; Luxembourg; Qatar and Singapore.

16. Argentina, Austria, Brazil, Canada, the Czech Republic, Hungary, India, Indonesia, Italy, Japan, Latvia, Mexico, Poland, Slovenia, South Africa, Switzerland and Turkey.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use and safeguards (ToR C.3.1) and All other information exchanged (ToR C.3.2)

309. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

310. All EOI agreements signed by Jersey since the 2011 Report and the Multilateral Convention include confidentiality provisions in line with Article 26(2) of the Model Tax Convention or Article 6 of the Model TIEA.

311. All of the TIEAs signed by Jersey since the 2011 Report and the Multilateral Convention also contain a provision allowing for the use of the information exchanged for other purposes with the express written consent of the requested party. The TIEA signed with India and the Multilateral Convention also allows for the disclosure of the information to another jurisdiction with the express written consent of the requested party.

Domestic law

312. The TIEA Regulations (as amended in 2012) set out a confidentiality obligation in relation to information received through EOI, which is backed by enforcement measures. Reg.16B of the TIEA Regulations provides that information received by the JCA from the competent authority of a third country pursuant to a TIEA must only be disclosed to persons, and used for purposes, described in that TIEA. A person who knowingly contravenes this provision commits an offence and is liable to a fine (reg.16(2) TIEA Regulations). A mirror provision was already set out in the DTA Regulations with regard to information received pursuant to a DTA (reg.5 DTA Regulations). This complements the oath of confidentiality of Jersey tax officials.

313. In addition, the DTA Regulations also set out an exception to the confidentiality obligations of tax officials so that they are allowed to pass on information to the competent authority, who is the Minister and not a tax officer. Reg.4(2) used to read “Notwithstanding anything contained in the 1961 Income Tax Law¹⁷ or any other enactment, the Comptroller may provide tax information to the competent authority of Jersey, for the purposes of the discharge of the obligations described in paragraph (1)”, i.e. EOI (emphasis added). However, the 2012 amendments replaced all references to the Comptroller in the DTA Regulations with reference to the competent authority for Jersey. As a result, Reg.4(2) now provides that the competent authority may provide tax information to the competent authority, which could be difficult to understand for a person not knowing the history of the Regulations. Moreover, a similar provision does not exist in the TIEA Regulations. It could therefore mean that the Minister designated as competent authority has no authority to receive tax information from the delegated competent authority or any tax official of Jersey. However, since in practice the EOI letters sent by Jersey are all sent by the delegated competent authority and never by the Minister designated as competent authority in the EOI instruments, this legal issue is not material, even though it might deserve a clarification.

Ensuring confidentiality in practice

314. As noted in the 2011 Report, Jersey has taken various precautions to ensure confidentiality of information and documents being received and kept with the competent authority: All hard copies of documents are stored in country box-files in a secure filing cabinet in the EOI office, to which only the EOI unit has keys (i.e. the delegated competent authority and EOI officer). Jersey’s EOI unit is located in a single secure office in the Taxes Office, to which the public has no access (the whole Taxes Office, staffed with 95 employees, is located in a single building, but taxpayers can only access the ground floor). Physical access to the offices is limited to Taxes Office staff with electronic security passes. All Taxes Office staff are subject to background checks, security screening and training, and are bound by a sworn oath of office not to disclose information.

315. The Jersey competent authority has slightly changed its working methods since 2012, when it started to scan the documents received and sent. Documents scanned to the document management system are accessible only

17. Section 111(2) of the Income Tax law provides that “Where any arrangements have effect by virtue of this Article, the obligation as to secrecy imposed by virtue of this Law shall not prevent the disclosure to any authorised officer of the Government with which the arrangements are made of such information as is required to be disclosed under the arrangements.”

to the EOI unit. The servers of the Taxes Office are not linked to the outside world and are therefore considered secure from external hacking. In addition, the EOI e-files are kept separate from the in-house government network and only the EOI unit has access to the files. So far, none of the information received in EOI requests was of relevance for domestic tax purposes, so the issue of whether and how information received could be shared with other departments of the Taxes Office has never arisen. If that would be the case in future, the Jersey competent authority should consider stamping all documents received with proper warning against the use of the information for purposes not authorised by the relevant EOI instrument.

316. Whereas correspondence was exchanged mainly by post mail or fax in the period 2007-09, it is now increasingly exchanged by emails together with post mail for jurisdictions with which secure internet exchange has not yet been agreed. Confidentiality is taken into account when exchanging information with partners: Information is transmitted to requesting authorities either in hard copy via courier, which can be tracked, or by e-mail using encryption technology (Win Zip).

317. Jersey highlights that the identity of the competent authority of the requesting jurisdiction is verified before information is sent to any individual, and, although information exchanged by Jersey is not treaty stamped before dispatch, a warning is included in all competent authority letters stating that the information is furnished under the provisions of the tax agreement and its use and disclosure are governed by the provisions of the agreement.

Confidentiality and disclosure of information to information holders

318. One EOI partner of Jersey noted in its peer input that Jersey in the period under review disclosed too much specific detail from the competent authority letter to the persons concerned by the EOI requests or to the information holders in the notices and summary of reasons served. It noted that Jersey had given details about the whole investigation process to the taxpayers and service provider: they were informed of the investigative steps taken in the requesting jurisdiction and of the level of co-operation provided by the foreign individual taxpayer. This is not in line with the standard as the minimum amount of information to be disclosed is information necessary for the requested jurisdiction to be able to identify, obtain or provide the requested information to the requesting jurisdiction. Under the standards, competent authority letters, including the request for information, are covered by confidentiality rules. The contents of the request itself should not be disclosed without permission of the requesting jurisdiction. Furthermore, if court proceedings or the like under the domestic laws of the requested jurisdiction necessitate the disclosure of the competent authority letter itself, the competent authority of the requested jurisdiction may disclose such a letter

unless the requesting jurisdiction otherwise specifies. The Jersey authorities stress that the competent authority has never disclosed the letter itself and has declined frequent requests from requested parties and their legal representatives to do so, other than when required to disclose it in court. It remains that it has happened, at least once, that information not considered as minimum information was disclosed during the period under review.

319. As noted under part B.1 and B.2 of the report, the EOI Regulations at the time requested that the use of access powers be restricted to cases where the competent authority of Jersey had “reasonable grounds for believing that a taxpayer may have failed... to comply with a domestic law of a third country concerning tax and that any such failure had led... to serious prejudice to the proper assessment or collection of tax”. As a result, the notice issued to the information holder and the summary sent to the notified taxpayer would typically substantiate the foreseeable relevance of the request, and in practice contained information regarding the jurisdiction and persons involved, and described the reasons for the request. In this respect it is relevant to highlight that some (other) peers noted that they discussed with Jersey in a number of cases the scope of information that could be disclosed to the information holder and/or taxpayer, thus reducing the risk of breaching confidentiality.

320. The competent authority noted that the Regulations did not provide any guidance as to the amount of information to be disclosed to justify the reasonableness of his decision, any more than there is any guidance elsewhere as to what is considered the minimum under the standards. The competent authority acknowledged that the amount of detail disclosed in cases where a summary of reasons for issuing the notice was provided to the taxpayer, in accordance with the requirement of the Regulations, may have exceeded that anticipated under the standards. Although exemptions from notifying the taxpayer are available and applied if a requesting authority so specifies, if a requesting authority does not so require and if the Jersey competent authority has no other reason to refrain from notification, the taxpayer must be notified.

321. Further, as Jersey points out, the amount and detail of information to be disclosed is further reduced in practice by the judgement in the Volaw case. The judgement made clear that the competent authority is not obliged to resolve issues of foreign law or reach definitive conclusions in respect of an individual’s tax liability when deciding whether it is reasonable to issue a notice. In practice this means that the necessity to prove these elements to the information holder or a taxpayer to demonstrate the reasonableness of the competent authority’s decision is removed, thus reducing the risk of breaching confidentiality.

322. A peer recently raised another issue related to the confidentiality of the information provided in an EOI letter as background to the request, which was disclosed as part of a court proceeding. The competent authority

provided a redacted version of the letter to the court, however, the court ruled that the complete letter was required in order to adjudicate the matter. This resulted in much of the information being published in the court decision issued in December 2013. The requesting jurisdiction considers that this disclosure could prejudice future investigations.

323. This case was decided on the basis of the 2012 version of the Regulations. The extent to which information will be required to be disclosed should be reduced by the 2013 and 2014 amendments to the EOI Regulations, which have removed i) the obligation to justify the reasonableness of the decision to use information gathering powers for EOI purposes; ii) the requirement on the Jersey competent authority to supply the notified taxpayer with a summary of reasons for issuing the notice; and iii) replaced the appeal process with a judicial review.

324. Some representatives of the private sector considered that with these new regulations they do not any longer need to know the reasons why some information is requested, thus substantially reducing the risk of breaching confidentiality. The Jersey competent authority is similarly confident that notices sent to the information holder (third parties or taxpayers) should be more succinct and limited to details needed to identify the requested information. It is also expected that the confidentiality of information exchanged will be better protected with the judicial review process, and the future practice of judicial reviews should be monitored.

Determination and factors underlying recommendations

| Phase 1 determination |
|--------------------------|
| The element is in place. |

| Phase 2 rating | |
|---|--|
| Largely compliant | |
| Factors underlying recommendations | Recommendations |
| <u>The disclosure during the period under review to third parties or taxpayers of details that are not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential. Recent amendments to the EOI Regulations should mitigate the risk of disclosure of confidential information.</u> | <u>Jersey should ensure that confidential information provided by requesting jurisdictions is handled suitably in all cases.</u> |

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

325. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

Exceptions to requirement to provide information (ToR C.4.1)

326. Jersey’s post-2011 Report EOI agreements provide that the parties are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret, or information the disclosure of which would be contrary to public policy, in line with the Model Tax Convention and Model TIEA.

327. During the period under review, no EOI request related to any of the above mentioned situations.

Determination and factors underlying recommendations

| Phase 1 determination |
|---------------------------------|
| The element is in place. |
| Phase 2 rating |
| Compliant |

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

328. In order for exchange of information to be effective it needs to be provided in a timeframe which allows the tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

329. The 2011 Report noted that none of Jersey’s EOI agreements require the provision of request confirmations, status updates or the provision of the requested information within the timeframes foreshadowed in Article 5(6) of the OECD Model TIEA. The same occurs with most of the TIEA signed since then and the Multilateral Convention; instead, they provide that the requested Party shall use its best endeavours to forward the requested information to the requesting Party: (i) “with the least possible delay” (ii) “with the least reasonable delay (iii) “as soon as possible”; or (iv) “as promptly as possible”. On the other hand, the TIEAs with Hungary, Slovenia and Switzerland reproduce the timeframes of the Model TIEA.

330. There are no specific legal or regulatory requirements which would prevent Jersey from responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request.

331. In the three-year review period (1 January 2010 – 31 December 2012), Jersey received a total of 133 requests for information from 16 partner jurisdictions. A request is regarded as a single request irrespective of the number of persons subject to the inquiry and/or pieces of information requested. Where a supplementary request for information was received in connection with the original request, this is viewed as part of the original request only where it concerns a question of clarification. Where additional information is requested, this is counted as a new request. This is also the case if a request is withdrawn and newly submitted afterwards.

332. The statistics provided by Jersey indicate that it had been in a position to provide a final response within 90 days in 52% of the cases, with another 22% processed within 180 days. The remaining requests were responded to after more than 180 days, except one which was still outstanding as at February 2014. The time periods were counted from the date of receipt of the request to the date on which the final and complete response was issued.

333. More regular requests, such as for banking information related to individuals, are usually handled within 90 days. On the contrary, delays occur in situations where there is objection or an appeal from the information holder or taxpayer. The response time in such a case could be above a year, and in exceptional cases could be of several years, as illustrated by the Volaw case (see part B above on Access powers). Response time is also dependant on the diligence of the requesting authority when answering clarification requests of the Jersey competent authority.

334. The Jersey competent authority acknowledges receipt of requests (either by email or letter) and keeps requesting authorities abreast of the status of request. The Jersey competent authority always sent an update

within 90 days after receipt of a request, including requests for clarifications and updates on developments in the event of potential delays (e.g. challenges to foreseeable relevance from information holders, notices of appeal received, progress in cases appealed).

335. The Jersey competent authority maintains a core spreadsheet identifying the number of requests handled, in total and by year, per requesting authority. The spreadsheet identifies the status of each case, the date of receipt of the original request and the date of supplying information. The number of open cases and the length of time that cases have been open are monitored to ensure that requests are handled in a timely manner.

Response times for requests received during the three-year review period

| | 2010 | | 2011 | | 2012 | | Total | Average | |
|---|------|------|------|------|------|------|-------|---------|-----|
| | nr. | % | nr. | % | nr. | % | nr. | % | |
| Total number of requests received (a+b+c+d+e+f) | 45 | 100% | 36 | 100% | 52 | 100% | 133 | 100% | |
| Full response*: ≤90 days | 22 | 49% | 17 | 47% | 30 | 58% | 69 | 52% | |
| ≤180 days (cumulative) | 34 | 76% | 25 | 69% | 39 | 75% | 98 | 74% | |
| ≤1 year (cumulative) | (a) | 41 | 91% | 27 | 75% | 43 | 83% | 111 | 83% |
| 1 year+ | (b) | 1 | 2% | 9 | 25% | 9 | 17% | 19 | 14% |
| Declined for valid reasons | (c) | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0% |
| Failure to obtain and provide information requested | (d) | 2 | 4% | 0 | 0 | 0 | 0 | 2 | 1% |
| Requests still pending at date of review | (e) | 1 | 2% | 0 | 0 | 0 | 0 | 1 | <1% |

* The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued. Further, response times in the table do include time taken to seek and get clarification from EOI partners.

** Jersey counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and or more than one piece of information is requested

*** The table does not include cases where the request for information was eventually withdrawn.

The abandonment of the informal requests to speed up the process

336. The EOI Regulations for most of the period under review provided for a two-stage approach, comprising an informal request followed where necessary with a formal notice. During the review period, Jersey had issued informal notices and formal notices to information holders (third parties and a few taxpayers).

337. In 2007-09, the practice was to give the person 10 days after the issuance of an informal notice to produce the information and 40 days after the issuance of a formal notice (the minimum required by law being 30 days). In

2010-11, the practice has been to give information holders 21 working days under the informal procedure to answer, and 35 working days after a formal notice.

338. After the October 2012 amendments and the removal of the obligation to issue an informal notice to third parties, the practice evolved to a total 30 day deadline and the same was done for taxpayers. Jersey's authorities reported a speeding up of the process for obtaining information for EOI as a result, after the period under review. Of the 51 requests received in 2013, and disregarding the 5 that have been withdrawn, 85% were answered within 90 days, and none was answered in more than a year.

339. A further acceleration is expected with the diminution of the minimum time to answer a formal notice from 30 to 15 days. The practice will evolve accordingly and requested persons are now given 15 days to answer the formal notice, thus reducing the whole process from ten to two weeks.

Organisational process and resources (ToR C.5.2)

Resources

340. As described in the 2011 Report, the competent authority for Jersey for its DTAs and TIEAs is the Minister for Treasury and Resources, or his authorised representative. At that time the Jersey Comptroller of Taxes had been delegated as the sole representative with regard to EOI, with the support of an administrative staff. However, since the 2011 Report, Jersey has continued to increase staff dedicated to EOI. First, a Deputy Comptroller (International) was recruited directly after the 2011 Report to support the Comptroller in his EOI activities. The Deputy Comptroller became the de facto competent authority in Jersey, responsible for EOI, on the Comptroller's sudden retirement through ill health, in March 2012. An expanded EOI unit was created in October 2013 through the addition of a Tax Information Exchange Officer. In March 2014, the delegation of functions was renewed to the Comptroller and Deputy Comptroller, and the Tax Information Exchange Office was formally authorised to process matters relating to EOI.

341. The EOI unit of the Taxes Office has sole responsibility for the collecting of information in response to a request. Since October 2013 the EOI unit consists of two full-time officers: the Deputy Comptroller of Taxes (International) and one additional full-time Tax Information Exchange Officer, both with responsibility for exchange of information under all of Jersey's international agreements, whether automatic or by request (TIEAs, DTAs, EU Savings Directive, the Multilateral Convention and FATCA).

342. The Deputy Comptroller of Taxes received training from the former Comptroller of Taxes on obligations under EOI mechanisms, internal

processing of requests and confidentiality obligations. This was supplemented by Global Forum assessor training and continued attendance at Global Forum Peer Review Group meetings. Experience gained in these fora and the practical experience of acting as assessor for other jurisdictions has meant that the Deputy Comptroller has been instrumental in developing Jersey's EOI processes. A structured programme of training is now being provided by the Deputy Comptroller to the newly appointed Tax Information Exchange Officer. The Comptroller and Acting Deputy Comptroller have also attended Global Forum competent authority meetings on an annual basis.

343. The EOI unit is supported, as necessary, by secretarial staff (one person) and clerical staff (two persons) from within the Taxes Office in the administration and processing of requests. Additional technical support is provided by the Taxes Office IT team and Data Control team, as appropriate.

344. Further support is provided to the EOI unit, as required, by Jersey's International Affairs Advisor in the Chief Minister's Department, who negotiates the tax agreements, to assist in the interpretation of specific treaties and with some bilateral political discussions, and by one dedicated officer in the Law Officers' Department where legal advice is required, to assist answering objections and in case of appeals.

345. The resource dedicated to EOI is currently under review and it is anticipated that staffing of the EOI unit will increase, in line with anticipated increases in volume of EOI requests consequent upon the increased number of EOI partners and the increased amount of information automatically exchanged under the EU Savings Directive and FATCA.

346. The Jersey competent authority is clearly identified on the Jersey government website.¹⁸ The Jersey competent authority is additionally fully identified on the Global Forum's competent authorities secure database.

Organisation

347. The organisation of the EOI work in 2010-11 was identical to the one described in the 2011 Report. The organisational methods have evolved with the change of person in charge of EOI from March 2012. This section of the report highlights the few changes in the organisation since that date.

348. All requests are acknowledged by the Jersey competent authority to the requesting authority on receipt, and this is increasingly done by email.

349. Up until March 2012, the Jersey competent authority had no tracking system to monitor progress made in EOI requests, but a basic track of

18. www.gov.je/TaxesMoney/InternationalTaxAgreements/TIEA/Pages/MakingTIEARequestInformation.aspx.

the number of cases open and closed per jurisdiction. Since March 2012, a number of steps have been taken to enhance the timeliness and completeness of information requested to be exchanged. Firstly, each request is logged in a core excel spreadsheet maintained by the competent authority, in which each stage of the processing of the request is recorded. The status of each request, deadlines for delivery of information, etc. are readily identifiable from the spreadsheet. Secondly, information received is scanned and stored in the Jersey competent authority's data management system. In the third place, the use of the tailored TIEA request template is encouraged even more, with a view of being beneficial to both sides by ensuring that the request is compliant with the requirements of TIEAs and Jersey's access powers legislation. In practice all these steps helped the Jersey competent authority in enhancing its overview and keeping track of the status of requests, notices and clarifications.

350. After obtaining the requested information from the person in possession or control, the Jersey competent authority reviews the information supplied to verify whether it complies with the request. However, as a thorough review is not done in all cases systematically, for instance not in cases where a large quantity of information is received or where the case and the information related to it are highly complex, some peers noted that information received was not complete and the JCA noted that it was not aware of that. In practice therefore, it may be beneficial if the JCA clearly states to the requesting jurisdiction whether or not the information received was thoroughly checked for completeness, and should explicitly ask the requesting jurisdiction to indicate whether additional information is needed.

351. There is no instruction or manual dedicated to EOI in Jersey, but the competent authority is considering developing guidelines in the near future, as the number of persons involved will increase. This is welcomed, especially as EOI has been handled by only one person for a long time and the knowledge gained may not be retained.

An enhanced relationship with peers

352. Jersey is very active in building good working relationships with its EOI partners. This starts from the time of the negotiation of a new EOI instrument, continuing with introductory meetings and is followed by annual meetings and visits to important EOI partners. The competent authority is also very active in participating in multilateral events and Global Forum competent authority meetings. Jersey is also assisting developing countries with a view to enhancing and strengthening their abilities to exchange information, when negotiating an EOI instrument with them. At most of these occasions, Jersey promotes its EOI template to its EOI partners, for their use when making a request to Jersey. The purpose of the template (which has

been compiled and revised using experience in dealing with actual requests for information) is to be beneficial to both sides by ensuring that the request is compliant with the requirements of TIEAs and Jersey’s access powers legislation. When meetings are held with partners to discuss actual requests for information, the opportunity is also taken to discuss with them (the voluntary) use of the template. Peers generally praise the ease of getting in touch and communication with the Jersey competent authority (by e-mail, telephone calls, face-to-face meetings etc.), which is further enhanced by the use of the EOI Portal/ secure website for EOI purposes.

353. Inputs from a number of peers highlight a co-operative and constructive working relationship with the Jersey competent authority, and his competence.

354. Despite these efforts, as noted above, two treaty partners indicated their dissatisfaction with the clarifications that were asked and the resulting long delays that occurred, as the requesting jurisdiction did not appreciate the importance of the clarifications requested and did not answer these quickly. The Jersey authorities have already taken corrective actions to reinforce the co-operation and relationship with these partners.

Absence of unreasonable, disproportionate or unduly restrictive conditions on exchange of information (ToR C.5.3)

355. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. Given the legislative amendments described in Part B above, the shortcomings noted in the 2011 Report have been removed. However, as noted in B.1 and B2, during the period under review there has also been a combination of factors that prevented Jersey from fully complying with the obligations it has accepted with respect to its EOI partners by responding to requests for information in a timely manner in all instances. The Jersey authorities acknowledge the situation and consider that the 2012 and 2013 amendments have already greatly improved the situation, and the issues highlighted are considered as “historic” and not representative of the current practice. Other than these matters identified earlier in this report, there are no further conditions that appear to restrict effective exchange of information in Jersey.

Determination and factors underlying recommendations

| Phase 1 determination |
|--|
| This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made. |

| Phase 2 rating | |
|--|---|
| Compliant | |
| Factors underlying recommendations | Recommendations |
| <p><u>The Jersey competent authority has been in a position to answer EOI requests in a timely manner in most instances. However, the drafting of the regulations led to challenges and appeals that unduly delayed exchange of information in some instances.</u></p> | <p><u>Jersey is encouraged to continue reviewing its work methods, for example on checking the completeness of answers, and monitor whether further changes are required to answer all EOI requests in a timely manner.</u></p> |

Summary of Determinations and Factors Underlying Recommendations

| Overall Rating |
|--------------------------|
| LARGELY COMPLIANT |

| Determination/rating | Factors underlying recommendations | Recommendations |
|--|------------------------------------|-----------------|
| Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| Banking information should be available for all account-holders. <i>(ToR A.3)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i> | | |
| Phase 1 determination: The element is in place. | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|---|---|
| <p>Phase 2 rating: Largely compliant</p> | <p>The drafting of access power provisions led to too many interpretation difficulties, objections from requested parties, and ultimately delays in the EOI process. The TIEA Regulations have been amended after the period under review to improve the efficiency of the gathering of information for EOI purposes.</p> | <p>The Jersey authorities should closely monitor the implementation of the amended EOI Regulations to ensure that they allow for an efficient gathering of information.</p> |
| | <p>The process put in place to gather information has produced the expected results in most cases in practice. However, in cases where the information holder did not answer a notice, or has not done so diligently, the Jersey competent authority has not always pursued all alternative and readily available avenues to gather information, which led to a few delayed or unsuccessful exchanges. The Jersey competent authority started to more consistently make better use of all available sources of information in 2012.</p> | <p>The Jersey competent authority should continue pursuing alternative means of investigation, where information is readily available, when the first line of investigation proves unsatisfactory. Now that the powers of the competent authority have been clarified, these should be enforced where necessary to answer an EOI request, to ensure an effective exchange of information.</p> |
| <p>The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i></p> | | |
| <p>Phase 1 determination: The element is in place.</p> | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|--|--|
| <p>Phase 2 rating: Largely compliant</p> | <p>Jersey amended a number of provisions in the EOI Regulations (on limiting appeals to judicial reviews, and limitations on notifications coupled with anti-tipping off rules) to ensure that rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction are compatible with effective exchange of information.</p> | <p>The Jersey authorities should monitor the effectiveness of the new Regulations to ensure that they provide for effective EOI.</p> |
| <p>Exchange of information mechanisms should allow for effective exchange of information. (ToR C.1)</p> | | |
| <p>Phase 1 determination: The element is in place.</p> | | |
| <p>Phase 2 rating: Largely compliant</p> | <p>In order to access information during the review period, Jersey had to seek clarifications in a number of cases, which delayed exchange of information. The amendments to the competent authority's access powers to address interpretation difficulties on the reasonableness of a notice for information, together with guidance provided by case law, should allow Jersey's competent authority to adopt a line more in keeping with the international standards. The Jersey authorities have also made significant efforts to enhance their relationship with some key EOI partners, and create good working relationships.</p> | <p>The Jersey authorities should continue their efforts towards limiting requests for clarifications to what is justified pursuant to the standard of foreseeable relevance.</p> |

| Determination/rating | Factors underlying recommendations | Recommendations |
|---|--|---|
| The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i> | | |
| Phase 1 determination: The element is in place. | | Jersey should continue to develop its EOI network with all relevant partners. |
| Phase 2 rating: Compliant | | |
| The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Largely compliant | The disclosure during the period under review to third parties or taxpayers of details that are not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential. Recent amendments to the EOI Regulations should mitigate the risk of disclosure of confidential information. | Jersey should ensure that confidential information provided by requesting jurisdictions is handled suitably in all cases. |
| The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i> | | |
| Phase 1 determination: The element is in place. | | |
| Phase 2 rating: Compliant | | |
| The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i> | | |

| Determination/rating | Factors underlying recommendations | Recommendations |
|--|---|--|
| <p>Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</p> | | |
| <p>Phase 2 rating: Compliant</p> | <p>The Jersey competent authority has been in a position to answer EOI requests in a timely manner in most instances. However, the drafting of the regulations led to challenges and appeals that unduly delayed exchange of information in some instances.</p> | <p>Jersey is encouraged to continue reviewing its work methods, for example on checking the completeness of answers, and monitor whether further changes are required to answer all EOI requests in a timely manner.</p> |

Annex 1: Jurisdiction’s response to the supplementary review¹⁹

As is clear from the Supplementary Review, the rating outcomes are based on the experience of the review period of 2010-2012. Considerable changes however took place in the laws and regulations, and practice, both in the latter part of the period under review and in the year immediately following, much of which arose from the need to respond to the blacklisting of Jersey by the French authorities in August 2013.

Because of this the Jersey authorities requested that the Supplementary Review should be deferred so that the year 2013 and the early months of 2014 could be taken into account but this was not agreed to by the Peer Review Group. As a result, the Jersey authorities have requested a second Supplementary Review covering 2013 and the first half of 2014.

That the changes in the laws and regulations – in 2012 in response to the recommendations in the Combined Review published in 2011 and in 2013 in response to the French black listing – are material to the rating outcomes is evidenced by the following, taken from the factors underlying recommendations in the Supplementary Review –

B1 – The drafting of access provisions led to too many interpretation difficulties, objections from requested parties, and ultimately delays in the EOI process. The TIEA Regulations have been amended after the period under review to improve the efficiency of the gathering of information for EOI purposes.

B2 – Jersey amended a number of provisions in the EOI Regulations (on limiting appeals to judicial reviews, and limitations on notifications coupled with anti-tipping off rules) to ensure that rights and safeguards (e.g. notifications, appeal rights) that apply to persons in the requested jurisdiction are compatible with effective exchange of information.

19. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

C1 – In order to access information during the review period, Jersey had to seek clarifications in a number of cases, which delayed exchange of information. The amendments to the competent authority's access powers to address interpretation difficulties on the reasonableness of a notice for information, together with guidance provided by case law, should allow Jersey's competent authority to adopt a line more in keeping with the international standards. The Jersey authorities have also made significant efforts to enhance their relationships with some key EOI partners, and create good working relationships.

C3 – The disclosure during the period under review to third parties and taxpayers of details that are not necessary for gathering the requested information is not in accordance with the principle that information contained in an EOI request should be kept confidential. Recent amendments to the EOI Regulations should mitigate the risk of disclosure of confidential information

For B1, reference is also made to the fact that in the period under review there were one or two historic cases where the Jersey competent authority had not always pursued all alternative and readily available avenues to gather information, which led to a few delayed or unsuccessful exchanges. However in the factors underlying recommendations it is stated that the Jersey competent authority started to more consistently make better use of all available sources of information in 2012. This improved practice has continued unchanged to-date and therefore in any subsequent Supplementary Review covering the period 2013 and the first half of 2014 the present recommendation in the current Supplementary Review should no longer be required.

For C3, the factors underlying recommendations have been greatly influenced by one case where the assessors contend that more than the "minimum" information it is necessary to disclose to obtain the requested information was disclosed. A review of the period 2013 and the first half of 2014 will show that the Jersey competent authority, assisted by the reduced risk of appeals with the current Regulations, has acted in accordance with what, having regard to the facts and circumstances of a case, should be accepted as the minimum information it is necessary to disclose.

The Jersey authorities are confident that, if the period covering 2013 and first half of 2014 is subject to review, the effectiveness of the current Regulations and current practice will be clearly shown and B1, B2, C1 and C3 will justify being rated as compliant.

That the Jersey authorities are fully committed to transparency and exchange of information for tax purposes should also be evident from the following –

- Jersey joined in a joint statement issued on the 28 November 2013 by 36 countries and a further statement in March 2014 by 44 countries committing to the early adoption of the Common Reporting Standard on automatic exchange of information which has been produced by the OECD and adopted by the G20 Finance Ministers at their meeting in Sydney on 23/24th February 2014.
- Jersey joined with the G8 in the publication of an Action Plan in July 2013 for further enhancing the transparency of the ownership and control of legal persons and legal arrangements.
- Jersey has joined the Multi-lateral Convention on Mutual Assistance in Tax Matters, with effect from 1 June 2014.
- Jersey is a vice-chair of the AEOI working group of the Global Forum, which will monitor the implementation of the new international standard, as requested by the G20. This is seen as a reflection of Jersey's international standing as a co-operative jurisdiction complying with international standards.
- Jersey has signed intergovernmental agreements for improving international tax compliance with the USA for FATCA and with the UK for FATCA like.
- Jersey has signed 35 Tax Information Exchange Agreements and 8 Double Taxation Agreements to the international standard of which 29 TIEAs and 7 DTAs are in force.

Annex 2: Request for a supplementary report received from Jersey

In accordance with paragraph 58 of the methodology Jersey requests a supplementary report on the action taken to implement the recommendations in the combined Phase 1 and Phase 2 peer review report for Jersey adopted by the Global Forum in October 2011.

The methodology in paragraph 58 provides for a supplementary report to be requested where implemented changes are likely to result in an upgrade in a determination of an essential element to “the element is in place”. The following report sets out why Jersey considers that the action taken since the Global Forum adopted the Combined Phase 1 and Phase 2 peer review report in October 2011 justifies such an upgrade in the determinations for elements A2, B1 and C1.

BACKGROUND

In October 2011 the Global Forum adopted the combined Phase 1 and Phase 2 peer review report for Jersey. Of the 9 elements subject to review 6 were determined to be ‘in place’ and 3 were determined to be ‘in place, but certain aspects of the legal implementation of the element need improvement’.

In the report it is stated that ‘while Jersey’s infrastructure and practical experience is relatively new it has however been effective and expeditious to-date’. It is further stated “Overall, this review of Jersey identifies a legal and regulatory framework for the exchange of information which generally functions effectively to ensure that the required information will be available and accessible. The review notes the short period of time that Jersey has been exchanging information for tax purposes. Nonetheless, Jersey’s practices to date have demonstrated a responsive and cooperative approach. Jersey has shown a willingness to develop its laws and procedures to reflect best practices appropriate to its circumstances and has accepted the need to review its domestic laws to ensure the removal of any provisions which may affect its ability to meet the requirements of the standard.”

The assessors recommendations in respect of each of the 3 elements that were considered to be “in place, but ...” are as follows –

A2: Availability of information – accounting records

Recommendations

“Introduce consistent obligations for all relevant entities and arrangements to maintain reliable accounting records, including underlying documents in line with the Terms of Reference.”

“Clarify binding requirements of LPs, SLPs, ILPs, trusts and foundations, to maintain reliable accounting records for at least a minimum 5 year period.”

B1: Competent authority’s ability to obtain and provide information.

Recommendations

“Jersey should amend its domestic legislation to remove the identified impediments to effective access to relevant information”.

C1. Exchange of Information mechanisms

Recommendations

“Jersey should work with Guernsey and ensure that it has in place an agreement which includes exchange of information provisions in line with the international standard.”

“Jersey should continue to work with its EOI partners to ensure that the provisions highlighted and the interpretation of its EOI agreements do not impede the effective exchange of information to the international standard, in line with the intention of the contracting parties”

ACTION TAKEN IN RESPONSE TO THE RECOMMENDATIONS.

The action taken in respect of each of the recommendations in the Jersey peer review report is as follows –

A2: Availability of information – accounting records

The Taxation (Accounting Records) (Jersey) Regulations (see attached) have been approved by the Chief Minister, and have been laid before

Parliament for adoption on the 4th June 2013 and to come into force seven days later. These Regulations mirror similar legislation enacted by Guernsey in 2012 to which the peer review report recently adopted by the Global Forum makes reference.

The Jersey Financial Services Commission (the regulator of all financial services provided in Jersey) remains of the view expressed in Annex 1 of the peer review report that the existing legislation places obligations on those concerned to maintain reliable accounting records and retain those records for more than five years. Also no problems have been experienced to-date in providing information in response to requests for information. However these Regulations give the required clearer statutory support for the maintenance of reliable accounting records for at least a minimum five year period, and it is considered that the determination of ‘in place, but...’ should be changed to ‘in place’.

B1: Competent Authority’s ability to obtain and provide information.

The Jersey Regulations that provide for the Competent Authority to obtain the information required in order to respond to the information requests received have been amended in response to the comments in the peer review report to which reference is made below. The amendments to the Regulations (see attached Taxation (Miscellaneous Provisions (Jersey) Regulations 2012) were adopted by the Island’s Parliament on 2nd October 2012. The amendments have been incorporated into the attached revised Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008.

Para 207 of the peer review report raises concerns that the reference to ‘liability to tax’ in Regulations 2 and 3, and the definition of ‘taxpayer’ in Regulation 1, might not encompass all the information within Article 1 of the OECD Model TIEA. The amendment to the Regulations meets these concerns in the revised wording of Regulations 2 and 3, and the revised definition of ‘taxpayer’ in Regulation 1.

Para 208 of the peer review report raises concerns regarding the inclusion of the words ‘serious prejudice’ in Regulation 3. The amendment to the Regulations meets these concerns in the omission of any reference to ‘serious prejudice’ in Regulation 3.

Para 210 of the peer review report raises concerns regarding the scope of the information that can be obtained from a third party. The amendment to the Regulations meets these concerns by the insertion of a new definition of tax information and revisions to the wording of Regulations 2 and 3, and Regulations 7 and 8.

Para 211 of the peer review report refers to the ‘serious prejudice’ threshold in Regulation 12. This remains in the Regulations. The view is held that there needs to be an appropriate degree of gravity before search and seizure powers are exercised.

Paras 212-214 of the peer review report raise concerns regarding the definition of ‘tax information’ and the absence of a definition of ‘possession’ in the DTA Regulations. The amendment to the Regulations meets these concerns through the revised definition of ‘tax information’.

Para 215 refers to the requirement in the Regulations for the taxpayer to be named. The amendment to Regulation 3 removes this limitation.

Jersey believes that the amendments to the Regulations satisfy the recommendation that “Jersey should amend its domestic legislation to remove the identified impediments to effective access to relevant information.”

Accordingly Jersey considers that the determination of ‘in place, but...’ should now be changed to ‘in place’.

C1. Exchange of information mechanisms

A new Double Taxation Agreement (DTA) which includes exchange of information provisions in line with the international standard was signed with Guernsey on the 24th January 2013 (see attached).

Para 265 of the peer review report refers to the fact that “certain provisions in the EOI Regulations may have the effect of preventing the JCA from having access to information which fall within the scope of Jersey’s EOI agreements”. The amendment of the Regulations referred to above in connection with B1 is considered to fully meet these concerns.

The specific issues that arose concerning the different interpretation of the agreements in respect of what constitute “criminal tax matters” have been fully resolved.

Jersey believes that the action taken in agreeing a new DTA with Guernsey to the international standard satisfies the recommendation that “Jersey should work with Guernsey and ensure that it has in place an agreement which includes exchange of information provisions in line with the international standard.”

Jersey further believes that the action taken to revise the EOI Regulations, and also resolve the issues concerning the different interpretation of the agreements, satisfies the recommendation that “Jersey should continue to work with its EOI partners to ensure that the provisions highlighted and the interpretation of its EOI agreements do not impede the

effective exchange of information to the international standard, in line with the intention of the contracting parties.”

Accordingly Jersey considers that the determination of ‘in place, but...’ should now be changed to ‘in place’.

C2. Exchange of information mechanisms with all relevant partners

While the element is ‘in place’ it is recommended in the peer review report that ‘Jersey should continue to develop its EOI network with all relevant partners’.

At the time of the peer review report Jersey had signed 19 EOI agreements to the standard. There are now 39 signed (31 TIEAs and 8 DTAs) of which 29 are in force. All of the signed agreements yet to enter into force have been ratified by Jersey.

There are 12 EOI agreements ready for signing or where negotiations are well advanced.

Agreements have been signed, or negotiations are well advanced, with 17 of the 19 G20 members, 33 of the 34 OECD members and 25 of the 27 EU members.

As at the time of writing Jersey has received 151 requests for information from 15 countries. Of these 73 related to criminal tax matters. 116 of the cases are now closed. Those outstanding are recent requests or cases where more information has been sought from the requesting Party in help achieve the best possible result.

General remarks

Para 45 of the peer review report refers to the absence of obligations placed on a person who is a nominee not acting by way of business and it is stated that “the effect of this on EOI in practice should be monitored by Jersey on an ongoing basis”. To-date there has been absolutely no effect on EOI in practice.

Para 116 of the peer review report refers to the absence of licensing obligations (or the AML regime) on trustees who are not acting by way of business and it is stated that “the effect of this on EOI in practice should be monitored by Jersey on an ongoing basis”. To-date there has been absolutely no effect on EOI in practice. Regard might also be had in this context to the views of the Peer Review Group, when considering horizontal issues, that careful analysis of the scope of the exclusion from AML requirements of

non-professional trustees needs to be considered on a case-by-case basis, and in the case of Jersey there are obligations under Common Law and the Trust Law.

Conclusion

Jersey believes it has done all that was required of it in responding to the recommendations in the peer review report and that the action taken should now merit an ‘in place’ determination for all of the elements.

Annex 3: List of all exchange of information mechanisms

Multilateral agreement

In a letter dated 12 February 2014 and registered by the Depositary of the convention on 17 February 2014, the United Kingdom declared that its ratification of the Convention as amended by the Protocol shall be extended to the territory of the Bailiwick of Jersey. In accordance with its Article 29, the Convention shall enter into force for the territory of Jersey on 1 June 2014. The status of the Multilateral Convention and its amending 2010 Protocol as at May 2014 is set out in the below table. For multilateral instruments, the date of the entry into force in the table is the latest date, among the two dates of entry into force in the two partners.

Bilateral agreements

The table below contains the list of information exchange agreements (TIEA) and tax treaties (DTA) signed by Jersey as of May 2014.

For jurisdictions with which Jersey has several agreements, a reference to each agreement is made in the below list of EOI mechanisms signed by Jersey as of May 2014 (and compared to the list as at the time of the 2011 Report, i.e. in December 2011), in alphabetical order:

| | Partner jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|---|----------------------|-------------------------|-------------|-------------------------|
| 1 | Albania | Multilateral Convention | signed | 1 June 2014 |
| 2 | Andorra | Multilateral Convention | signed | Not in force |
| 3 | Anguilla* | Multilateral Convention | extended | 1 June 2014 |
| 4 | Argentina | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jul-11 | 09-Dec-11 |
| 5 | Aruba** | Multilateral Convention | extended | 1 June 2014 |

| | Partner jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|----|-------------------------|-------------------------|---------------|-------------------------|
| 6 | Australia | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jun-09 | 05-Jan-10 |
| 7 | Austria | Multilateral Convention | signed | Not in force |
| | | TIEA | Sep-12 | 01-Jun-13 |
| 8 | Azerbaijan | Multilateral Convention | signed | Not in force |
| 9 | Belgium | Multilateral Convention | signed | Not in force |
| | | TIEA | 13 March 2014 | Not in force |
| 10 | Belize | Multilateral Convention | signed | 1 June 2014 |
| 11 | Bermuda* | Multilateral Convention | extended | 1 June 2014 |
| 12 | Brazil | Multilateral Convention | signed | Not in force |
| | | TIEA | Jan-13 | Not in force |
| 13 | British Virgin Islands* | Multilateral Convention | extended | 1 June 2014 |
| 14 | Canada | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jan-11 | 19-Dec-11 |
| 15 | Cayman Islands* | Multilateral Convention | extended | 1 June 2014 |
| 16 | Chile | Multilateral Convention | signed | Not in force |
| 17 | China | Multilateral Convention | signed | Not in force |
| | | TIEA | Oct-10 | 10-Nov-11 |
| 18 | Colombia | Multilateral Convention | signed | 1 July 2014 |
| 19 | Costa Rica | Multilateral Convention | signed | 1 June 2014 |
| 20 | Croatia | Multilateral Convention | signed | 1 June 2014 |
| 21 | Curaçao** | Multilateral Convention | extended | 1 June 2014 |
| 22 | Czech Republic | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jul-11 | 14-Mar-12 |
| 23 | Denmark | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Oct. 2008 | 06-Jun-09 |
| 24 | Estonia | Multilateral Convention | signed | Not in force |
| | | DTA | Dec-10 | 30-Dec-11 |
| 25 | Faroe Islands*** | Multilateral Convention | extended | 1 June 2014 |
| | | TIEA | Oct. 2008 | 21-Aug-09 |

| | Partner jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|----|----------------------|-------------------------|-------------|---------------------------|
| 26 | Finland | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Oct. 2008 | 03-Aug-09 |
| 27 | France | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Mar-09 | 11-Oct-10 |
| 28 | Georgia | Multilateral Convention | signed | 1 June 2014 |
| 29 | Germany | Multilateral Convention | signed | Not in force |
| | | TIEA | Jul-08 | 28-Aug-09 |
| 30 | Ghana | Multilateral Convention | signed | 1 June 2014 |
| 31 | Gibraltar* | Multilateral Convention | extended | 1 June 2014 |
| 32 | Greece | Multilateral Convention | signed | 1 June 2014 |
| 33 | Greenland*** | Multilateral Convention | extended | 1 June 2014 |
| | | TIEA | Oct. 2008 | 06-Jun-09 |
| 34 | Guatemala | Multilateral Convention | signed | Not in force |
| 35 | Guernsey* | DTA | 1956 | 1956 (terminated 2013) |
| | | DTA | Jan-13 | 09 July 13 |
| | | Multilateral Convention | extended | 1-August-14 |
| 36 | Hong Kong, China | DTA | Feb-12 | 03-Jul-13 |
| 37 | Hungary | Multilateral Convention | signed | Not in force |
| | | TIEA | Jan-14 | Not in force |
| 38 | Iceland | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Oct. 2008 | 03-Dec-09 |
| 39 | India | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Nov-11 | 08 May 12 |
| 40 | Indonesia | Multilateral Convention | signed | Not in force |
| | | TIEA | Apr-11 | Not in force |
| 41 | Ireland | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Mar-09 | 05 May 10 |
| 42 | Isle of Man | Multilateral Convention | signed | 1 June 2014 |
| | | DTA | Jan-13 | 10 July 13 |
| 43 | Italy | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Mar-12 | Not in force |

| | Partner jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|----|----------------------|-------------------------|-------------|-------------------------|
| 44 | Japan | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Dec-11 | 30-Aug-13 |
| 45 | Kazakhstan | Multilateral Convention | signed | Not in force |
| 46 | Korea, Republic of | Multilateral Convention | signed | 1 June 2014 |
| 47 | Latvia | Multilateral Convention | signed | Not in force |
| | | TIEA | Jan-13 | 01 March 14 |
| 48 | Liechtenstein | Multilateral Convention | signed | Not in force |
| 49 | Lithuania | Multilateral Convention | signed | 1 June 2014 |
| 50 | Luxembourg | Multilateral Convention | signed | Not in force |
| | | DTA | Apr-13 | Not in force |
| 51 | Malta | Multilateral Convention | signed | 1 June 2014 |
| | | DTA | Jan-10 | 19-Jul-10 |
| 52 | Mexico | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Nov-10 | 22 March 12 |
| 53 | Moldova | Multilateral Convention | signed | 1 June 2014 |
| 54 | Montserrat* | Multilateral Convention | extended | 1 June 2014 |
| 55 | Morocco | Multilateral Convention | signed | Not in force |
| 56 | Netherlands | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jun-07 | 01-Mar-08 |
| 57 | New Zealand | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jul-09 | 27-Oct-10 |
| 58 | Nigeria | Multilateral Convention | signed | Not in force |
| 59 | Norway | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Oct. 2008 | 07-Oct-09 |
| 60 | Poland | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Dec-11 | 01-Nov-12 |
| 61 | Portugal | Multilateral Convention | signed | Not in force |
| | | TIEA | Jul-10 | 09-Nov-11 |
| 62 | Qatar | DTA | Mar-12 | 22-Nov-12 |
| 63 | Romania | Multilateral Convention | signed | Not in force |
| 64 | Russian Federation | Multilateral Convention | signed | Not in force |
| 65 | San Marino | Multilateral Convention | signed | Not in force |
| 66 | Saudi Arabia | Multilateral Convention | signed | Not in force |

| | Partner jurisdiction | Type of EOI arrangement | Date signed | Date entered into force |
|----|---------------------------|-------------------------|-------------|-------------------------|
| 67 | Singapore | Multilateral Convention | signed | Not in force |
| | | DTA | Oct-12 | 02-May-13 |
| 68 | Sint Maarten** | Multilateral Convention | extended | 1 June 2014 |
| 69 | Slovak Republic | Multilateral Convention | signed | Not in force |
| 70 | Slovenia | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Nov-13 | Not in force |
| 71 | South Africa | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Jul-11 | 29-Feb-12 |
| 72 | Spain | Multilateral Convention | signed | 1 June 2014 |
| 73 | Sweden | Multilateral Convention | signed | 1 June 2014 |
| | | TIEA | Oct. 2008 | 23-Dec-09 |
| 74 | Switzerland | Multilateral Convention | signed | Not in force |
| | | TIEA | Sep-13 | Not in force |
| 75 | Tunisia | Multilateral Convention | signed | 1 June 2014 |
| 76 | Turkey | Multilateral Convention | signed | Not in force |
| | | TIEA | Nov-10 | 11-Sep-13 |
| 77 | Turks and Caicos Islands* | Multilateral Convention | extended | 1 June 2014 |
| 78 | Ukraine | Multilateral Convention | signed | 1 June 2014 |
| 79 | United Kingdom | Multilateral Convention | signed | 1 June 2014 |
| | | DTA | 1952 | 1952 |
| | | TIEA | Oct. 2008 | 27-Nov-09 |
| 80 | United States | Multilateral Convention | signed | Not in force |
| | | TIEA | Nov. 2002 | 23-May-06 |

* The Government of the United Kingdom declared, at various dates, that the United Kingdom's ratification of the Convention as amended by its Protocol shall be extended to the territory of the Anguilla, the British Virgin Islands, Cayman Islands, Gibraltar, Jersey, the Isle of Man, Montserrat and the Turks and Caicos Islands.

** Extension of the Multilateral Convention to the countries of the Kingdom of the Netherlands.

*** Extension of the Multilateral Convention to the autonomous regions of the Kingdom of Denmark.

DTAs and TIEAs are available on the website of the website of the Taxes Office at: www.gov.je/TaxesMoney/InternationalTaxAgreements/Pages/default.aspx as well as on the EOI Portal at <http://eoi-tax.org/>.

Annex 4: List of all laws, regulations and other material received

Legislation relating to EOI arrangements

- Tax (Implementation) (Jersey) Law 2004
- Taxation (United States of America) (Jersey) Regulations 2006 as amended in 2012 and repealed in 2014
- Taxation (Exchange of Information with Third Countries) (Jersey) Regulations 2008, as amended in 2012 and 2013
- Taxation (Double Taxation) (Jersey) Regulations 2010, as amended in 2012 and 2014
- Taxation (Implementation) (Convention on Mutual Administrative Assistance in Tax Matters) (Jersey) Regulations 2014

Legislation relating to Tax

- Income Tax (Jersey) Law 1961
- Taxation (Accounting Records) (Jersey) Regulations 2013

Other Legislation

- Interpretation (Jersey) Law 1954
- Money Laundering (Jersey) Order 2008
- Control of Borrowing (Jersey) Order 1958

Case law on EOI

Volaw Trust & Corporate Services Lts and Mr Larsen v. the Office of the Comptroller of Taxes; Royal Court 16 May 2013 and Appeal Court 28 November 2013

Royal Court, 30 December 2013, APEF Management Company 5 Limited vs the Comptroller of Taxes

Royal Court, 12 March 2014, Taylor Fladgate & Yeatman Limited vs Comptroller of Taxes acting as competent authority for Jersey

Annex 5: List of people met during the onsite visit

Treasurer of the States, Treasury & Resources

Tax Offices:

Deputy Comptroller of Taxes (International)

Tax Information Exchange Officer

Director, Business Tax

Chief Minister's Department:

Director of International Affairs

Advisor on International Affairs

Law Officers' Department:

Solicitor General

Legal Advisors

Jersey Financial Services Commission:

Director, Banking & Insurance

Deputy Director, Registry & Non-Supervisory Operations

Deputy Director, Trust Company Business

Senior Manager, Office of the Director General

Senior Manager, Financial Crime Policy

Technical Director & Deputy CEO, Jersey Finance

Deputy Technical Director, Jersey Finance

Executive Director & Head of Tax, KPMG, Jersey

President of the Jersey Bankers Association

President of the Jersey Association of Trust Companies

